



**ATTORNEY REPORT
JOINT QUARTERLY MEETING
GENERAL and ENTERPRISE
July 2018**

TO: CRWCD BOARD OF DIRECTORS

FROM: PETER C. FLEMING, GENERAL COUNSEL *PCF*
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Dear Directors:

This report identifies matters for discussion at the July 17-18, 2018, joint quarterly meeting of the River District and its Enterprise. A separate Confidential Report addresses confidential matters. The information in this report is current as of July 5, 2018, and will be supplemented as necessary before or at the Board meeting.

I. EXECUTIVE SESSION.

The following is a list of matters that qualify for discussion in executive session pursuant to C.R.S. §§ 24-6-402(4)(b) and (e).

- A. Colorado River Cooperative Agreement Implementation Matters.
- B. Shorefox Water Matters.
- C. Diligence Application of Colorado Springs, Case No. 15CW3019, Water Division 5.
- D. Remand of Grand Valley Water Users Association v. Busk-Ivanhoe, Inc., Case No. 09CW142, Water Division 2.
- E. 1975 Taylor Park Reservoir Operations and Exchange Agreement.
- F. Eagle River Memorandum of Agreement and Eagle Park Reservoir Company Update. (Enterprise Matters).
- G. Colorado River Compact, Interstate and International Negotiation Matters.

II. GENERAL MATTERS.

A. *Hill v. Warsewa*, Civil Case No. 18-cv-00277, Federal District Court, District of Colorado.

Update only. Strategic Initiatives: 1B and 1C.

In April, we reported on a lawsuit filed in federal district court that sought to clarify the law governing public access to streams and rivers in Colorado. Hill, an angler, filed a declaratory judgment action seeking access to a stretch of the Arkansas River that flows through property owned by Warsewa. Hill claims that the bed of the river is public property based on the legal doctrine of “navigability-for-title” which effectively holds that if a waterway was used for interstate commerce purposes at the time of statehood, the state owns the stream bed and the public has access. On May 29th, Hill filed a motion to dismiss his complaint without prejudice (meaning that the lawsuit can be re-filed anytime in the future). The case was dismissed by the court on May 30th, so for now the specific public access issues raised in the lawsuit remain unresolved in Colorado.

III. RIVER DISTRICT WATER MATTERS.

A. Colorado River Cooperative Agreement – Implementation Issues.

Update only. We may request Board action depending on pending developments or following discussion in executive session. Strategic Initiatives: 5A, 5C, 8A, 9A.

We continue to work with other West Slope interests and Denver Water in implementation of several items related to the CRCA. On June 6th, the River District hosted a CRCA “check-in” meeting at the River District’s new conference room with Denver and representatives of the West Slope Signatories to the CRCA. The purpose of the meeting was to discuss the status of various CRCA implementation measures and discuss any new or developing matters of mutual concern. We also used the meeting as an opportunity to congratulate each other on the many successes that already have been achieved or are in process following execution of the CRCA. All of the parties confirmed their intent to conduct an annual CRCA “check-in” meeting for the foreseeable future.

At the June 6th meeting, Denver provided an update on its negotiations with the Consolidated Ditches and its members (including Aurora, Central Colorado Water Conservancy District, and the City of Brighton) to revise or terminate the so-called “1940 Agreement.” We previously have discussed how the 1940 Agreement between Denver and Consolidated Ditches prevents Denver from reusing otherwise reusable return flow that accrues to the river following Denver’s initial-use of its pre-1940 water rights (primarily, its Moffat System and senior Williams Fork rights). The purpose of the original agreement was to offset Denver’s evaporative losses from its South Platte Reservoirs with the reusable return flow from its then-existing transmountain rights. Over the years, the volume of Denver’s return flow from those rights has grown way beyond the volume of evaporative losses from its South Platte River basin reservoirs. Denver has repeatedly tried, without complete success, to reform the agreement or litigate the applicability of the agreement.

The West Slope has historically supported Denver's efforts to reuse all of its transmountain water sources in order to decrease its overall demands for West Slope water. Denver has shared with the West Slope CRCA Signatories drafts of the documents that it is negotiating with the Consolidated Ditches because the terms of those documents touch upon some of the provisions of the CRCA. Denver reports that it is very close to finalizing the agreements with the Consolidated Ditches and its member entities. We have provided Denver with our questions, comments, and suggested edits on the documents, and have set a meeting of the West Slope Signatories to discuss the documents for July 30th.

We anticipate providing the Board with a brief update on other CRCA Implementation and negotiation matters in executive session.

The Board may wish to discuss the 1940 Agreement issues and other CRCA Implementation matters in executive session.

B. Aspen Shorefox Water Matters.

Informational only. Strategic Initiatives: 4A and 4B.

Recently representatives of Aspen Shorefox, LLC contacted us about some water right matters that we would like to discuss with the Board. The water rights in question are pre-compact rights that divert from Willow Creek, downstream of Willow Creek Reservoir, a component of the Colorado-Big Thompson Project. Historically, the water rights have been used to irrigate approximately 500 acres near the Town of Granby.

This matter is discussed further in the Confidential Report. We request that the Board discuss this matter in executive session.

C. Application for Finding of Reasonable Diligence of Colorado Springs Utilities, Case No. 15CW3019, Water Division 5.

Update only. Strategic Initiatives: 3A, 3D, 4A, 5A, 5C.

The River District and a number of other West Slope entities are objectors in Colorado Springs' pending Blue River Decree diligence application for its Continental-Hoosier Transmountain Diversion Project. We continue to meet regularly with representatives of Colorado Springs and the other West Slope parties on the settlement goals that we previously discussed with the Board.

At the most recent settlement meeting, Colorado Springs staff gave a detailed presentation of its recently-adopted Integrated Water Resources Plan. We believe that the presentation would be helpful to the River District Board and staff in understanding Colorado Springs' extensive and complex water system. We think it would be worthwhile for the Board to reserve sometime at its October Board meeting for a presentation on the IWRP (Colorado Springs staff is not available for our July Board meeting dates but they have indicated that they are willing and available to make a presentation in October).

This matter is discussed further in the Confidential Report. The Board may wish to discuss it in executive session.

D. Remand of Grand Valley Water Users Assoc., et al. v. Busk-Ivanhoe, Inc., Case No. 09CW142, Water Division 2.

Update, no action requested. Strategic Initiatives: 3A, 3D, 4A, 5A, 5C.

We are pleased to report that an agreement on final settlement language has been reached by the representatives of the parties negotiating the remand of the Busk-Ivanhoe case. A copy of the proposed agreement and the proposed decree are included as Attachments A and B to this report.

The proposed agreement and decree are consistent with the direction provided to staff and counsel at the River District's April meeting. We therefore plan to execute the agreement and stipulation for entry of the proposed decree, following our presentation to the Board and discussion of any Board questions.

The Board may wish to discuss any questions about the proposed settlement in executive session.

E. 1975 Taylor Park Reservoir Operations and Exchange Agreement.

Update only. Direction sought to pursue a long-term extension or renewal of the 1975 Taylor Park Reservoir Operation and Exchange Agreement. Strategic Initiatives: 2A, 2B, 7C, 8A, 9A,

The River District is a signatory to the 1975 Taylor Park Reservoir Operations and Exchange Agreement. The other signatories are the United States, the Uncompahgre Valley Water Users Association, and the Upper Gunnison River Water Conservancy District. The purpose of the agreement is to memorialize the parties' intent to implement releases and accounting practices between Taylor Park Reservoir and the Aspinall Unit in order to optimize flows in the Taylor River and facilitate beneficial uses of water within the Gunnison River basin upstream of the Aspinall Unit (which, in 1975, was called the Curecanti Unit). The agreement established the foundation for the appropriation and adjudication of the Taylor Park Reservoir Refill Storage Right, which has proven to be very beneficial for water management practices in the Gunnison River basin.

The 1975 Agreement has a termination date of August 28, 2025. However, the agreement provides that it will continue past the 2025 date unless one of the parties terminates the agreement by 90-day written notice. The Upper Gunnison District believes that it makes sense to pursue a more secure long-term extension (or renewal) of the 1975 Agreement. We agree, and are working with the Upper Gunnison District and the Uncompahgre Water Users to discuss a preferred strategy.

We will report back to the Board prior to formal execution of any such extension or other renewal. We request the Board provide direction supporting this effort, or express any concerns it may have. This matter is discussed in the Confidential Report. The Board may wish to discuss it in Executive Session.

F. Colorado Water Conservation Board Contract for In-channel Use of Ruedi Reservoir Water (an Enterprise matter).

We request that the Board authorize staff to negotiate, and the General Manager to execute, a one-year water marketing contract with the CWCB, utilizing the CWCB's form contract. Strategic Initiatives: 9A, 12A.

The Colorado Water Conservation Board has approached the River District regarding a lease of 3,500 AF of water from Ruedi Reservoir to enhance winter flows in the Fryingpan River below the reservoir. At your April meeting, the Board approved the use of its water marketing supplies for these in-channel purposes on a year-to-year contract basis. The River District uses a standard water marketing contract form approved by the Board; however, the CWCB recently informed us that it will require the use of the State's form contract for this lease. We have reviewed the State's form contract and with some relatively minor edits we believe that it will work for the purposes of this one-year lease.

We recommend that the Board authorize staff to negotiate and the General Manager to execute a one year water marketing contract with the CWCB, utilizing the State's form contract, for lease of up to 3,500AF as previously authorized by the Board at its April 2018 meeting, subject to approval by General Counsel.

G. Mid-Year Review of General Counsel's Goals and Objectives.

Update only. Board input welcome. Strategic Initiatives are identified on individual goals and objectives.

Consistent with past custom, a list of General Counsel's Goals and Objectives for 2018, is set forth below as a mid-year status check, with update notes where appropriate.

1. Continue Implementation of the Colorado River Cooperative Agreement (CRCA). Strategic Initiatives: 5A, 5C, 7B, 7D, 8A, 8E, 9A, 12A.

a. Work toward successful adjudication of the Green Mountain Reservoir Administrative Protocol. *We continue to work with Denver and the other parties to the GMR Administrative Protocol Agreement to obtain stipulations with the objectors in the State Water Court case that will adjudicate the Protocol. Concurrently, we also are working with the other parties to encourage the United States to file a motion with the Federal Court seeking to clarify the scope of the court's jurisdiction to adjudicate the GMR Protocol so that the Protocol can be approved by both courts as contemplated in the CRCA and the Protocol Agreement.*

b. Provide leadership on the West Slope investigation contemplated by the CRCA to fully explore all methods to preserve the Shoshone Call Flows. *We continue to dedicate significant time to this effort.*

c. Convene and implement the West Slope Fund Management Committees to manage the investments and disbursement criteria for income to the West Slope Fund. *This subject was discussed with a number of the West Slope parties at the CRCA “check-in” meeting. I will ensure that a meeting is set after the summer vacation season.*

2. Work to ensure a satisfactory implementation of actions contemplated by the Windy Gap Firing Project IGA. Strategic Initiatives: 5A, 5C, 7B, 8A, 8E, 9A.

a. *We are actively working on completion of the two primary WGFP implementation items: (i) amendment of the Windy Gap water rights to incorporate the terms of the IGA, and (ii) implementation of the Windy Gap Connectivity Channel in a manner that protects overall West Slope interests and is consistent with applicable law.*

3. Assist staff on development of a strategic water rights development plan. Strategic Initiatives: 2A, 2B, 3A, 4A, 7A, 7B, 7C, 8A, 9A, 12A.

a. *We provided a comprehensive refresher of the evolving law on diligence at the April Board meeting and obtained direction from the Board regarding River District conditional water rights.*

4. Advise staff and Board on legal matters related to Wolford Dam Embankment issues. Strategic Initiatives: 7D, 9A, 12A. *Ongoing.*

5. Advise staff and Board on legal matters related to the upcoming transfer of forty-percent interest in Wolford Mountain Reservoir and Ritschard Dam to Denver Water. Strategic Initiatives: 9A, 12A. *We anticipate providing the Board with a short history on these matters at the October meeting.*

6. Work with River District technical and external affairs staff to increase overall River District presence and outreach in Water Divisions 4 and 6. Strategic Initiatives: 1A, 1C, 1E, 2A, 2B. *Ongoing.*

7. Advise the River District Board, and work closely with River District staff and other entities on matters related the System Conservation Pilot Programs, Colorado River Basin Study “Next Steps”, the conceptual Colorado River Water Bank, and implementation of the State Water Plan. Strategic Initiatives: 3B, 3C, 3D, 4A, 4B, 4C, 4D, 5B, 5C, 6A-E, 8B-E. *We have dedicated significant time to the objectives/actions described below during the first half of this year and anticipate continuing to do so for the foreseeable future.*

a. Expand knowledge, participation, and advice to the Board on interstate compact matters and other matters related to interstate Colorado River negotiations.

b. Related to these items, advise the River District on the potential scope and extent of State Engineer rules and regulations related to the 1922 and 1948 Colorado River Compacts.

c. Protect the West Slope's interests by helping the River District proceed with caution on matters related to demand management as it impacts West Slope agriculture.

8. Assist River District technical staff and advise the Board on negotiations related to implementation of the Eagle River MOU. Strategic Initiatives: 4A, 5B, 5C, 7B, 7C, 8A, 8D, 9A, 12A. *There have been a number of significant developments related to this goal, and it has commanded more time and attention than we initially anticipated at the beginning of the year.*

9. Provide leadership and assist River District staff on implementation of RCPP Grants, including the Gunnison Basin Projects. Strategic Initiatives: 2A, 2B, 3D, 4A, 6D, 6E, 7C, 7D, 8A, 9A, 10B. *Despite setbacks outside of the control of the River District, we have worked with River District staff to achieve the best results for River District constituents while protecting the River District's interests in the very complicated contracting process that is required to implement the Gunnison Basin Project.*

10. While not identified as a priority goal and objective in January, we are spending a fair amount of time on negotiations related to resolution of the pending Colorado Springs diligence application. We therefore request that the Board consider adding resolution of that case to the list of General Counsel's 2018 Goals and Objectives.

The above list should not necessarily be interpreted as a "priority" list for legal staff. There are numerous ongoing tasks and activities that command legal staff's time on an ongoing basis. Often, those items (such as the day-to-day litigation of water court cases, assisting staff on legislative matters, etc.) require substantial attention from legal staff. In addition, it should be anticipated that the goals and objectives may change throughout the year as priorities shift due to unforeseen circumstances or actions by others. Finally, it is possible that in some cases, General Counsel's goals and objectives should be discussed with the Board in executive session if necessary to protect the confidentiality of attorney-client communications and matters subject to negotiation.

H. Eagle River Memorandum of Agreement and Eagle Park Reservoir Company Update. (Enterprise Matters).

We may seek Board action following potential discussion in executive session. Strategic Initiatives: 5C, 7A, 7B, 7C, 7D, 8A, 9A, 12A.

The River District is a party to the Eagle River MOU, which, among other items, contemplates development of water projects in the Eagle River basin by the West Slope parties and the Homestake Partners in three phases. The first phase yield was effectively developed with the construction/remediation of the Eagle Park Reservoir. The MOU contemplates that the remaining Phase II and Phase III yields would be developed jointly by all of the MOU parties, or subject to certain conditions, separately by one or more of the MOU parties.

We reported in April that the Eagle River Water and Sanitation District and the Upper Eagle Regional Water Authority provided written notice pursuant to the MOU that they wish to proceed with an enlargement of Eagle Park Reservoir (from its existing approximate 3,300 acre feet capacity to a volume between 6,500 and 7,950 acre feet) as a Phase II MOU Project. As directed by the Board, we formally responded to the notice that the River District does not opt to participate in the proposed enlargement at the currently-estimated cost per acre foot. The other MOU parties all responded that they desire to participate in the enlargement (and included additional project components to their responses), subject to various qualifications expressed in their respective responses to the 90-day notice.

Eagle River MOU related matters are discussed in the Confidential Report. The Board may wish to discuss these matters in executive session.

IV. COLORADO RIVER COMPACT, INTERSTATE, AND INTERNATIONAL NEGOTIATION MATTERS.

Update only. Strategic Initiatives: 4A, 4B, 4C, 4D, 6A, 6C, 6D, 8B, 8D, 8E.

Andy Mueller's memo provides a good update on the recent UCRC meeting held on June 20th. With respect to other compact-related matters, we continue to work with the Southwestern Conservation District and others on concepts related to "demand management sideboards" as discussed at the River District's May 23rd Joint Meeting with the Southwestern District. Our primary goal in those discussions is to address West Slope concerns about unfettered fallowing of West Slope agricultural land. There have been a number of developments in those negotiations in recent weeks that we wish to discuss with the Board in executive session.

These matters are discussed in the Confidential Report. The Board may wish to discuss them and other sensitive negotiation and legal items related to other compact and interstate matters in executive session.

Attachments:

- A. DRAFT Agreement and Intergovernmental Agreement between CRWCD, Basalt WCD, Eagle County, Pitkin County, Grand Valley Water Users Association, Orchard Mesa Irrigation District and Ute WCD
- B. DRAFT Busk-Ivanhoe Amended Findings of Fact, Conclusions of Law, Judgment and Decree, Case No. 09CW142, Water Division 2

Agreement and Intergovernmental Agreement between Aurora, CRWCD, Basalt WCD, Eagle County, Pitkin County, Grand Valley Water Users Association, Orchard Mesa Irrigation District, and the Ute WCD

This Agreement and Intergovernmental Agreement (the “Agreement”) is entered into as of the Effective Date herein below defined, by and between:

- The City of Aurora, Colorado, a Colorado municipal corporation of the Counties of Adams, Arapahoe, and Douglas, acting by and through its Utility Enterprise ("Aurora") and,
- Busk Ivanhoe, Inc., a Colorado mutual ditch company (“B-I Inc.”), and
- The Colorado River Water Conservation District (“CRWCD”) and,
- The Basalt Water Conservancy District (“BWCD”) and,
- The Board of County Commissioners of Eagle County (“Eagle”) and,
- The Board of County Commissioners of Pitkin County (“Pitkin”) and,
- The Grand Valley Water Users Association (“GVWUA”) and,
- Orchard Mesa Irrigation District (“OMID”) and,
- The Ute Water Conservancy District acting by and through the Ute Water Activity Enterprise (“Ute”).

Individually these entities are sometimes hereinafter referred to as a “Party” and collectively as the “Parties.” The CRWCD, BWCD, Eagle, Pitkin, GVWUA, OMID and Ute are collectively referred to as the “West Slope Parties.”

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WHEREAS Colorado law authorizes governmental entities to cooperate and enter into Intergovernmental Agreements pursuant to Section 18(2) of Article XIV of the Colorado Constitution and CRS §29-1-203; and,

WHEREAS, Parties who are not governmental entities covered by Section 18(2) of Article XIV of the Colorado Constitution and CRS §29-1-203 enter into this Agreement pursuant to their independent authority and ability to contract; and,

WHEREAS Aurora is the sole owner of the capital stock of B-I Inc., a Colorado mutual ditch company, and B-I Inc. owns an undivided one-half (1/2) interest in the water rights of the Busk-Ivanhoe System; and,

WHEREAS during 2009 B-I Inc. initiated a Water Court action captioned WD-2, 09CW142, wherein the Water Court initially issued a Ruling and Decree on May 27, 2014, and following an appeal to the Colorado Supreme Court as Grand Valley Water Users Association vs. Busk-Ivanhoe Inc., 14SA303, the matter was remanded back to the Water Court on December 5, 2016; and,

WHEREAS thereafter the Parties engaged in extensive settlement discussions to address various matters of mutual concern to them and to develop a stipulated agreement amongst themselves regarding a proposed Amended Findings of Fact, Conclusions of Law, Judgment and Decree comporting with the Colorado Supreme Court's opinion.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

I. Introduction and General Provisions

1. **Effective Date.** The "Effective Date" of this Agreement shall be the date on which the Agreement is executed by the last Party to sign.

2. **Subject Areas / Non-severability.** Through this Agreement the Parties address five significant subject areas where the agreements herein set forth will inure to their individual and collective benefit. Although the subject areas may appear to be distinct they were combined for purposes of this Agreement and the Parties agree that regarding this Agreement none of the subject areas are severable from the others. The subject areas are:

- 2.1 Roaring Fork River Water Delivery
- 2.2 Fryingpan River Exchanges and Storage
- 2.3 Shoshone Outage Protocol & Shoshone Permanency
- 2.4 Diligence Detente
- 2.5 Entry of Final Decree in Water Division-2, Case No. 09CW142

These subject areas are considered in sections **II–VI** of this Agreement. Additionally, other

subjects of agreement appear herein and the Parties agree all such subjects of agreement are also non-severable.

3. Process. Following the Effective Date, the Parties shall enter into a Stipulation to which this Agreement shall be attached and incorporated. The Stipulation will be submitted for approval by the Water Court for Water Division 2. If said Stipulation is approved the Agreement shall be enforceable as an Order of the Court amongst the Parties subject to this paragraph 3 and its subparts. The Parties agree the contemplated Stipulation shall bind and benefit them; however, individuals, including but not limited to other parties appearing in WD-2, 09CW142 and the Cases consolidated therewith (WD-1, 09CW272 and WD-5, 09CW186) other than the Parties are neither bound by nor are they intended to benefit from this Agreement or the contemplated Stipulation. Immediately following approval of the Stipulation, the Parties will jointly seek entry by the Division 2 Water Court of the Draft Decree attached hereto as Exhibit A as the Final Decree in WD-2, 09CW142 providing, *inter alia*, for a 60-year rolling average of 2,416 A-F of diversions per year, a 20-year rolling average of 3,192 A-F per year and an annual maximum 4,064 A-F. Aurora and B-I Inc. agree these diversions are contingent upon continuing compliance with the obligations and requirements of this Agreement by Aurora and B-I Inc. and their successors in interest if any.

3.1 Should the Draft Decree be entered as the Final Decree, and the periods for any appeal or other reconsideration of the entry of said Decree expire without appeal or reconsideration, the Parties will promptly proceed to implement all other agreements contained within this Agreement. If such occurs the Initiation Date is the date after which the Decree becomes final and all appeal and reconsideration periods have ended. Prior to the Initiation Date, the Parties will cooperate in good faith to support the desired completion of the subject areas of this Agreement.

3.2 The Parties acknowledge the Water Court could decline to enter the Draft Decree as submitted and/or there could be further appellate proceedings. If the Draft Decree is not entered as the Final Decree or the Draft Decree is reconsidered or appealed, the Parties will hold in abeyance implementation of all agreements contained in this Agreement until following the conclusion of any reconsideration or appeal proceedings. If, at the conclusion of any reconsideration, appeal or other proceedings, the Draft Decree is entered as the Final Decree the Parties will promptly proceed to implement all agreements contained within this Agreement.

3.3 If at the conclusion of any reconsideration, appeal or other proceedings the Draft Decree is not entered as the Final Decree this Agreement and the Stipulation referenced in this paragraph 3 will terminate and the Parties will be released from all duties and obligations to implement any of the agreements contained in this Agreement unless the Parties unanimously agree in writing as set forth in paragraph 3.4.

3.4 If any Water Court, reconsideration, appeal or other proceedings result in the entry of a changed or modified form of the Draft Decree, the Parties agree to confer within 7-days

of the entry of any changed or modified form of decree. After conferral the Parties must unanimously agree in writing among themselves to promptly proceed to implement the agreements contained within this Agreement or to otherwise amend the Agreement. If the Parties do not reach such unanimous agreement within 30-days of entry of a changed or modified form of the Draft Decree, any single Party may, by written notice to the other Parties, terminate this Agreement and the Stipulation referenced in this paragraph 3 no later than 45-days following entry of a changed or modified form of the Draft Decree. Upon such termination, the Parties will be released from all duties and obligations to implement any of the agreements contained in this Agreement and the Stipulation referenced in this paragraph 3 and Aurora agrees it will seek to withdraw the changed or modified form of decree entered. Alternatively, the Parties agree they will move to have the Water Court reconsider and enter a decree consistent with this Agreement and the Stipulation. The West Slope Parties agree to support such withdrawal or reconsideration motion. The Parties agree in the event of the entry and subsequent withdrawal of a decree not unanimously agreed upon that each of them retain their legal positions regarding WD-2, 09CW142 as those positions existed when 14SA303, was remanded back to the Water Court. The Parties agree any invocation of the Water Court's retained jurisdiction as described in paragraph 38 of the Draft Decree will not be considered a reconsideration, appeal or other proceeding as described in this paragraph 3. The Parties further agree that none of them will seek to invoke the referenced Water Court's retained jurisdiction, except as provided for in paragraph 19.1 of the proposed decree, unless there is unanimous agreement among the Parties to do so.

4. Not Precedent. This Agreement and the components thereof are the result of substantial and extensive settlement discussions. It is specifically understood and agreed by the Parties that the acquiescence of the Parties and the components thereof were the result of current specific factual and legal circumstances of the Parties and upon the numerous and interrelated compromises reached by the Parties. Thus the existence of this Agreement and the components thereof shall never give rise to any argument, claim, defense or theory of acquiescence, waiver, bar, merger, stare decisis, res judicata, estoppel, laches or otherwise, nor to any administrative or judicial practice or precedent, by or against any of the Parties in any other agreement, matter, case or dispute, nor shall testimony concerning such agreement or acquiescence of any Party to this Agreement and the components thereof be allowed in any other matter, case or dispute. The Parties agree they do not intend this Agreement and the components thereof to have the effect of precedent or preclusion on any factual or legal issue in any other matter.

5. No Property Transfers. The Parties agree no portion of this Agreement should be construed or interpreted as a transfer of title or a transfer of ownership of any water, water right or any facility for the supply, treatment and distribution of water owned by any of the Parties.

6. Assignability and Delegation, if any. The rights and duties of the Parties under this Agreement and the Stipulation will apply to, bind and obligate any and all successors or delegates in interest of the Parties if any are allowed. Unless specifically set forth herein, none of the Parties may assign their rights nor delegate their duties hereunder without the prior written consent of the other Parties. Further none of the Parties may sell or sublease any of benefits derived hereunder without the permission of the other Parties, which permission individual Parties may grant or withhold at their discretion. Nevertheless, the prohibition expressed in the previous sentence does

not apply to the circumstance of a recipient being able to sell, lease or otherwise fully use in any fashion water derived from any benefit inuring to such recipient.

7. No Waiver of Governmental Immunity. Notwithstanding any provisions of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, either expressed or implied, of the monetary limitations on liability or any of the immunities, rights, benefits or protections provided to any Party under the Colorado Governmental Immunity Act, § 24-10-101, et seq. C.R.S., as amended or as may be amended. The Parties understand and agree liability for claims for injuries to persons or property arising out of the alleged negligence of any Party, their officials and employees may be controlled or limited by said Act, as amended or as may be amended. Any provision of this Agreement, whether or not incorporated herein by reference, shall not be interpreted to control, limit or otherwise modify so as to limit any liability protection of any Party pursuant to the above cited laws.

8. Force Majeure. Subject to the terms and conditions in this paragraph, no Party to this Agreement shall be liable for any delay or failure to perform under this Agreement due solely to conditions or events of *force majeure*; provided that: (i) the non-performing Party gives the other Parties prompt written notice describing the particulars of the occurrence of the *force majeure*; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the *force majeure* event or condition; and (iii) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Parties describing the actions taken to remedy the consequences of the *force majeure* event or condition.

9. No Water Quality Objections. The Parties acknowledge the quantity of water that may be stored, delivered and/or exchanged pursuant to various provisions of this Agreement is raw water derived from, and comingled with, water from multiple stream sources. Thus, the Parties agree not to object to the quality of the raw water that may be stored, delivered and/or exchanged pursuant to various provisions of this Agreement.

10. SEO & DEO. The Colorado State Engineer and the Division Engineers for Water Division's 1, 2 and 5 ("SEO & DEO") are Opposers in WD-2, 09CW142, WD-1, 09CW272 and WD-5, 09CW186, and have not previously stipulated to the entry of a decree. The Parties agree to use their best efforts to seek the SEO's & DEO's confirmation that the means for implementing the provisions of this Agreement can be administered by the SEO & DEO and the SEO's & DEO's agreement to the entry of the Draft Decree set forth in Exhibit A. The SEO & DEO are not parties to this Agreement and nothing in this Agreement shall affect the ability of the SEO & DEO to comply with their statutory and administrative duties, including participating in subsequent water court proceedings to ensure their ability to administer any subsequent decrees entered by the water courts.

11. Future Cooperation. A fundamental premise of this Agreement is the Parties will not actively seek to undermine, or encourage others to undermine, the Parties' respective interests and resources committed, compromised, dedicated or otherwise addressed in this Agreement. For purposes of this paragraph, "Adverse Action" means an action of a legislature, court, administrative agency, regulatory body or other governmental entity that would cause a material

adverse impact to a Party's interests or resources committed, compromised or otherwise addressed in this Agreement. In the event that an Adverse Action is proposed or is likely to occur as the result of an action by a Party to this Agreement, the Party whose interests or resources would suffer a material adverse impact will notify the other Parties. The Party affected by the Adverse Action and the Party or Parties whose action caused it to arise will diligently meet and discuss in good faith the potential detrimental effect of such Adverse Action, with the goal of determining whether any action by any one of them could avoid the Adverse Action or mitigate its impact on the affected Party. Each Party to such discussion agrees to evaluate in good faith whether it can implement changes in its operations or undertake other efforts that would achieve this goal, and to implement any such efforts as may be agreed to in such discussion.

11.1 As part of this Agreement the West Slope Parties understand that Aurora seeks to develop two projects, Wild Horse Reservoir in Water Division 1 and Box Creek Reservoir in Water Division 2. Should the West Slope Parties, jointly or individually, determine a need to participate in any of the permitting processes associated with either Wild Horse Reservoir or Box Creek Reservoir, they agree that (a) they will notify Aurora of their concerns as soon as practicable during the NEPA scoping process and diligently work in good faith with Aurora to find a solution; and (b) any participation in the permitting processes by the West Slope Parties will not seek to prevent the project in its entirety and comments or requests may be raised only for the purpose of addressing water related impacts caused directly by either of the two above specified projects on the West Slope (defined as geographic areas west of the Continental Divide).

11.2 Additionally, the West Slope Parties further agree they will not oppose in Water Court or permitting processes 1) the need for any changes in points of diversion for the development of facilities under WD-5, Case Nos. 88CW449, 95CW272 (A) and/or existing Homestake system conditional water rights; 2) Aurora's obtaining permits to rebuild, repair or replace if necessary the Carlton Tunnel to its existing decreed carrying capacity, and/or emergency or temporary use of the Nast and/or Boustead Tunnels through an excess capacity contract with the U.S. Bureau of Reclamation; and 3) Pitkin obtaining a Bureau of Reclamation contract for use of Ruedi Reservoir as described within this Agreement. In the context of this Agreement, "not oppose" means a Party will not take actions to impair or impede the moving party's or parties' ability to obtain necessary certifications, permits, licenses, contracts, decrees and/or authorizations, including county 1041 regulations, needed to complete the identified project as long as such repair or replacement is not an expansion of existing decreed water rights. However, this Agreement shall not preclude any Party from submitting fair comments to governmental entities, including identification of issues of concern not in conflict with the spirit of this Agreement, or participating in any water court proceeding.

11.3 Any Party to this Agreement that is a permitting authority for an identified particular project will be exempt from the provisions of this paragraph 11 for such identified particular project.

12. Future Dialog. The Parties agree to from time to time conduct meetings and conversations about water matters of mutual benefit and of concern to them individually.

13. WD-5, 13CW3109. WD-5, 13CW3109 is a recreational in-channel diversion application by the City of Glenwood Springs. Aurora is an opposer in that case. Aurora agrees to continue to meet in good faith with the Applicant in that case toward the end of resolving contested issues.

14. Enterprise Obligations.

14.1 Sole Obligation of Aurora's Utility Enterprise. This Agreement shall never constitute a general obligation or other indebtedness of the City of Aurora, Colorado ("City") or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of the Constitution and laws of the State of Colorado or of the Charter and ordinances of the City. In the event of a default by Aurora's Utility Enterprise of any of its obligations under this Agreement, the other Parties shall have no recourse for any amounts owed to it against any funds or revenues of the City except for those revenues derived from rates, fees or charges for the services furnished by, or the direct or indirect use of, the Water System and deposited in the Water Enterprise Fund, as the terms "Water System" and "Water Enterprise Fund" are defined in City Ordinance No. 2003-18, and then only after the payment of all operation and maintenance expenses of the Water System and all debt service and reserve requirements of any bonds, notes, or other financial obligations of the Utility Enterprise secured by a pledge of the net revenues of the Water Enterprise Fund. Notwithstanding any language herein to the contrary, nothing in this Agreement shall be construed as creating a lien upon any revenues of the Utility Enterprise or the City. Aurora represents this Agreement has been duly authorized, executed and delivered by Aurora and constitutes a valid and legally binding obligation of Aurora, enforceable against Aurora in accordance with the terms hereof, subject only to the terms hereof and to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

14.2 Sole Obligation of Ute Water Activity Enterprise. This Agreement shall never constitute a general obligation or other indebtedness of Ute Water Conservancy District ("Ute District") or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the Ute District within the meaning of the Constitution and laws of the State of Colorado. In the event of a default by the Ute Water Activity Enterprise ("Ute Enterprise") of any of its obligations under this Agreement, the other Parties shall have no recourse for any amounts owed to it against any funds or revenues of the Ute District except for the revenues of the Ute Enterprise derived from pursuing, continuing and conducting all of the District's Water Activities, as that term is defined in the resolution creating the Ute Enterprise and any existing and future amendments thereto, and then only after the payment of all operation, maintenance and other expenses related to the District's Water Activities and all debt service and reserve requirements of any bonds, notes, or other financial obligations of the Ute Enterprise secured by a pledge of the net revenues of the Ute Enterprise. Notwithstanding any language herein to the contrary, nothing in this Agreement shall be construed as creating a lien upon any revenues of the Ute Enterprise or the Ute District. Ute represents that this Agreement has been duly authorized, executed and delivered by Ute and constitutes a valid and legally binding obligation of Ute, enforceable against Ute in accordance with the terms hereof, subject only to the terms hereof and to

applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

14.3 Sole Obligation of Basalt Water Activity Enterprise. This Agreement shall never constitute a general obligation or other indebtedness of BWCD or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the BWCD within the meaning of the Constitution and laws of the State of Colorado. In the event of a default by the BWCD of any of its obligations under this Agreement, the other Parties shall have no recourse for any amounts owed to it against any funds or revenues of the BWCD except for the revenues of its Basalt Water Activity Enterprise (“Basalt Enterprise”) derived from pursuing, continuing and conducting all of its Water Activities, as that term is defined in any resolution creating or defining the Basalt Enterprise and any existing and future amendments thereto, and then only after the payment of all operation, maintenance and other expenses related to the Basalt Enterprise’s Water Activities and all debt service and reserve requirements of any bonds, notes or other financial obligations of the Basalt Enterprise secured by a pledge of the net revenues of the Basalt Enterprise. Notwithstanding any language herein to the contrary, nothing in this Agreement shall be construed as creating a lien upon any revenues of the Basalt Enterprise or the Basalt District. BWCD represents that this Agreement has been duly authorized, executed and delivered by BWCD and constitutes a valid and legally binding obligation of BWCD, enforceable against BWCD in accordance with the terms hereof, subject only to the terms hereof and to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

14.4 Sole Obligation of the Colorado River Water Conservation District acting by and through its Colorado River Water Projects Enterprise. This Agreement shall never constitute a general obligation or other indebtedness of the CRWCD or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the CRWCD within the meaning of the Constitution and laws of the State of Colorado. In the event of a default by the CRWCD of any of its obligations under this Agreement, the other Parties shall have no recourse for any amounts owed to it against any funds or revenues of the CRWCD except for the revenues of its Colorado River Water Projects Enterprise (“CRWCD Enterprise”) derived from pursuing, continuing, and conducting all of its Water Activities, as that term is defined in the resolution creating the CRWCD Enterprise and any existing and future amendments thereto, and then only after the payment of all operation, maintenance and other expenses related to the CRWCD Enterprise’s Water Activities and all debt service and reserve requirements of any bonds, notes or other financial obligations of the CRWCD Enterprise secured by pledge of the net revenues of the CRWCD Enterprise. Notwithstanding any language herein to the contrary, nothing in this Agreement shall be construed as creating a lien upon any revenues of the CRWCD Enterprise or the CRWCD. CRWCD represents that this Agreement has been duly authorized, executed and delivered by CRWCD and constitutes a valid and legally binding obligation of CRWCD, enforceable against CRWCD in accordance with the terms hereof, subject only to the terms hereof and to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

15. Miscellaneous

15.1 Intent of Agreement. This Agreement is intended to describe the rights and responsibilities of and between the Parties and is not intended to, and shall not be deemed to confer rights upon any persons or entities not named as Parties or as authorized assigns, nor to limit in any way the powers and responsibilities of the Parties, or any other entity not a Party or assign hereto.

15.2 Entire Agreement. This Agreement represents the entire bargain and contract of the Parties and none of the Parties has relied upon any fact or representation not expressly set forth herein. All prior and contemporaneous conversations, negotiations, possible alleged agreements, representations, covenants and warranties concerning the subject matter hereof, are merged in this Agreement.

15.3 Multiple Originals. This Agreement may be simultaneously executed in any number of counterparts, each one of which shall be deemed an original, but all of which constitute one and the same Agreement.

15.4 Amendment. This Agreement may be amended, modified, changed or terminated in whole or in part only by written agreement duly authorized and executed by the Parties.

15.5 Headings for Convenience. Headings, titles and the table of contents contained herein are intended for the convenience and reference of the Parties only and are not intended to confine, limit or describe the scope of intent of any provision of this Agreement.

15.6 Governing Law. This Agreement and its application shall be construed in accordance with the law of the State of Colorado.

15.7 No Attorney Fees. In the event of any litigation, mediation, arbitration or other dispute resolution process arising out of or related to this Agreement each Party agrees to be responsible for its own attorney and other professional fees, costs and expenses associated with any such proceedings.

15.8 No Construction Against Drafter. This Agreement was drafted by Aurora with review and comment from the attorneys for the other Parties. Accordingly, the Parties agree the legal doctrine of construction against the drafter will not be applied should any dispute arise concerning this Agreement.

15.9 Non-Severability: Effect of Invalidity. Each provision of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties. If any provision of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be held invalid or unenforceable for any reason by a Court of competent jurisdiction the Parties shall promptly meet in order to enact a new agreement that as near as possible replicates the provisions hereof.

15.10 Waiver of Breach. Waiver of breach of any of the provisions of this Agreement by

any Party shall not constitute a continuing waiver of any subsequent breach by said Party of either the same or any other provision of this Agreement.

15.11 Non-Business Days. If any date for any action under this Agreement or its application falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in Rule 6 of the Colorado Rules of Civil Procedure, then the relevant date shall be extended automatically until the next business day.

15.12 Recitals. The recitals herein are hereby incorporated into this Agreement.

15.13 No Recordation. The Parties expressly agree this Agreement will not be recorded in any Clerk and Recorder's Office within or outside of Colorado except as may be required for the act of approving this Agreement by any one of the Parties. All Parties expressly agree this unmodified Agreement may be referenced, included or otherwise incorporated in any future or pending Water Court Application or administrative proceeding before the office of the Colorado State Engineer.

15.14 Authority of the Parties. Subject to the terms this Agreement, the Parties each affirm and represent they have the full power and authority to execute this Agreement.

15.15 No Agency Created and No Third Party Beneficiaries. This Agreement is not intended and shall not be construed to create any joint venture, agency relationship or partnership between the Parties. None of the Parties shall have any right or authority to act on behalf of or bind another Party. The agreements herein and the benefits therefrom are solely intended for the Parties hereto and are not for the benefit of, nor may they be claimed as benefits, by third parties.

15.16 Execution of Additional Documents. The Parties agree to execute any further documents reasonably necessary to complete the transactions provided for or contemplated by this Agreement.

15.17 Specific Performance. The Parties hereto are entitled to seek the remedy of specific performance regarding any breaches hereof by another Party.

15.18 Notice. Except as to any operational communications that the Parties may subsequently agree are best handled through electronic or telephonic means, all notices, requests, demands or other communications (collectively, "Notices") hereunder shall be in writing and given by (i) established express delivery service which maintains delivery records requiring a signed receipt, (ii) hand delivery or (iii) certified or registered mail, postage prepaid, return receipt requested to the Parties at the following address, or at such other address as the Parties may designate by Notice in the above manner.

To Aurora and/or B-I Inc.:

City of Aurora
15151 East Alameda Parkway, Suite 3600

Aurora, CO 80012-1555
Attn: Director, Aurora Water

with copy to City of Aurora
15151 East Alameda Parkway, Suite 5300
Aurora, CO 80012-1555
Attn: City Attorney

with copy to Hamre, Rodriguez, Ostrander & Dingess, PC
3600 Yosemite Street, Suite 500
Denver, CO 80237-1829
Attn: John M. Dingess, Esq.

To CRWCD: Colorado River Water Conservation District
Attention: General Manager
P.O. Box 1120
Glenwood Springs, CO 81602

with copy to: Colorado River Water Conservation District
Attention: General Counsel
P.O. Box 1120
Glenwood Springs, CO 81602

To BWCD: Basalt Water Conservancy District
P.O. Box 974
Glenwood Springs, CO 81602

with copy to: Balcomb & Green, P.C.
P.O. Drawer 790
Glenwood Springs, CO 81602
Attn: Christopher L. Geiger, Esq.

To Eagle: Eagle County Attorney
P.O, Box 850
500 Broadway
Eagle, CO 81631-0850

with copy to: Balcomb & Green, P.C.
P.O. Drawer 790
Glenwood Springs, CO 81602
Attn: Christopher L. Geiger, Esq.

To Pitkin: Pitkin County Attorney's Office
530 East Main Street, Suite 301
Aspen, CO 81611

with copy to: Pitkin County Manager's Office
530 East Main Street, Suite 302
Aspen, CO 81611

To GVVUA: Grand Valley Water Users Association
Attention: General Manager
1147 24 Road
Grand Junction, CO 81505

with copy to: Williams, Turner & Holmes, P.C.
Attention: Kirsten M. Kurath
744 Horizon Court, Suite 115
Grand Junction, CO 81506

To OMID: Orchard Mesa Irrigation District
Attention: District Manager
668 38 Road
Palisade, CO 81526

with copy to: Williams, Turner & Holmes, P.C.
Attention: Kirsten M. Kurath
744 Horizon Court, Suite 115
Grand Junction, CO 81506

To Ute: Ute Water Conservancy District
Attention: Manager
2190 H ¼ Road
Grand Junction, CO 81505

with copy to: Ute Water Conservancy District
Attention: General Counsel
2190 H ¼ Road
Grand Junction, CO 81505

with copy to: Williams, Turner & Holmes, P.C.
Attention: Kirsten M. Kurath
744 Horizon Court, Suite 115
Grand Junction, CO 81506

Notices shall be effective (i) the day of delivery indicated by the delivery receipt when sent by an established express delivery service which maintains delivery records requiring a signed receipt, (ii) upon receipt by the addressee of a hand delivery, or (iii) the day of delivery indicated by the Return Receipt when mailed via Certified or Registered mail, postage

prepaid, Return Receipt Requested.

15.19 No Other Agreement or Decree Modified. Unless specifically identified and referenced in this Agreement no other agreement or contract between any of the Parties or between any Party and a third party, or any water decree or stipulation is modified or changed by this Agreement.

15.20 Failure to perform any obligation contained in this Agreement by any Party shall constitute a default. Any Party may seek legal or equitable recourse in any court of competent jurisdiction including suspension of the terms of this Agreement, the Stipulation and the Decree. Failure to enforce any default shall not be construed as a waiver by any Party of the default or remedies for breach. If, for any reason except for failures described in paragraphs 8, 22 and 23 hereof, Aurora fails or is unable to fulfill its obligations under the provisions of this Agreement, Aurora's diversions of the Busk-Ivanhoe water rights that are the subject of this Agreement shall cease until such time as Aurora is again in compliance with this Agreement. Any such cessation of Busk-Ivanhoe diversions by Aurora will not excuse or postpone any other obligations of Aurora set forth in this Agreement.

II. Roaring Fork River Water Delivery

16. Aurora Twin Lakes Ownership. Aurora currently owns 2,488.475 shares of the Twin Lakes Reservoir and Canal Company ("Twin Lakes") representing approximately five percent of the total issue of 49,588.965 shares. The Parties acknowledge Aurora's ability to request the activities of Twin Lakes hereinafter described is limited and subject to its pro rata ownership. Twin Lakes by mention of its name in this Agreement is not made a party hereto; no Party is due any third-party performance from Twin Lakes. If the sale of shares of stock, dilution of the current shares, or changes in the rights represented by Aurora's current shares of stock occur such that Aurora no longer has interest or benefit of Twin Lakes shares of stock as contemplated and described in this Agreement and this change results in an inability of Aurora or its successor to fulfill the obligations of this Agreement then B-I Inc./Aurora are in default pursuant to paragraph 15.20 above until such time as the preexisting stock condition is restored, but Aurora's and B-I Inc.'s other obligations under this Agreement shall remain. This Agreement does not change, modify, revise or amend any other contract or agreement between any of the Parties and Twin Lakes. Aurora agrees that it will not request Twin Lakes to perform any illegal operations or activities. The Parties agree that Twin Lakes assumes no liability for any operations it conducts pursuant to the terms of this Agreement. Further, the Parties agree that in the event operations of Twin Lakes conducted pursuant to the terms of this Agreement result in the initiation of legal proceedings against Twin Lakes then Twin Lakes may immediately cease such operations pending resolution of the said legal proceedings against Twin Lake to its satisfaction.

17. Roaring Fork Delivery Location. As a Twin Lakes shareholder Aurora may call for deliveries and bypasses of its "in priority" water derived from the transbasin component of its Twin Lakes shares at or near the outlet of Grizzly Reservoir, a facility with an operating volume of approximately 500 A-F, located in Pitkin County within Lincoln Gulch upon Lincoln Creek, a tributary to the Roaring Fork River. Consistent with Twin Lakes operating requirements and

requests of Pitkin and the CRWCD, deliveries may also be made from Twin Lakes' facilities located on the Roaring Fork River near Lost Man Creek.

18. Water Deliveries and Bypasses. Subject to the following, pursuant to the Twin Lakes decrees and according to its operating principles and provided Aurora's ownership of Twin Lakes shares yield to Aurora an amount equal to or greater than the bypasses or releases of water from the Independence Pass Trans-mountain Diversion System during the subject year, beginning in the Twin Lakes Water Year (October 1 - September 30 Twin Lakes Water Year) following the Initiation Date, Aurora will cause to be delivered through bypasses or releases to the Roaring Fork River up to a total of 900 A-F of its Twin Lakes water each Twin Lakes Water Year. As used within Section II of this Agreement the term "bypass" means water diverted pursuant to Aurora's Twin Lakes shares under the Twin Lakes' priority and then delivered to the Roaring Fork River at a time when such water is physically and legally available under such right. Annually, designated representatives of Pitkin, CRWCD, Aurora and Twin Lakes will develop, subject to the terms of this Agreement, detailed delivery schedules reasonably considering and reflecting the desired rate, timing, amount, location and ultimate use of the water, as well as the operational needs and constraints upon the Independence Pass Transmountain Diversion System. Pitkin, CRWCD, Aurora and Twin Lakes may consult with other appropriate parties, if any, in developing the delivery schedules. Delivery schedules may be updated from time-to-time throughout the Water Year as warranted by hydrology, operational constraints or other factors. It is recognized by the Parties that deliveries under this paragraph will be conducted in a manner designed to maximize benefits to Roaring Fork River stream flows which is a benefit to the West Slope Parties and the Colorado River basin as stated in paragraph 20. Delivery of this water will be completed by the end of the Twin Lakes Water Year. Aurora will not carry over to following years any undelivered or un-bypassed water. The Parties agree any water provided per the terms of this paragraph 18 and its subparts retains its identity as water derived from the exercise of the Twin Lakes water rights. The water deliveries and bypasses contemplated by this paragraph 18 are not contingent upon the operation of any exchange described in paragraph 19. Other water users may be allowed to operate exchanges or otherwise divert and provide a substitute supply for the Twin Lakes water bypassed, so long as the DEO ensures delivery of the bypassed amount, minus transit losses, to any exchange from point or point of delivery to an actual decreed location of use. The Twin Lakes water will be delivered to the Roaring Fork River as described in 18.1 and 18.2 below:

18.1 Annual Roaring Fork Delivery. 900 A-F will be delivered annually during each Twin Lakes Water Year from or through Grizzly Reservoir, or bypassed from the Twin Lakes System's Roaring Fork diversions. If Aurora's 2,488.475 Twin Lakes shares do not yield 900 A-F as a result of drought or other climatic conditions or the physical capacity of the facilities of Twin Lakes as described in paragraph 22, then such lesser amount supported by the yield of Aurora's 2,488.475 shares will be delivered. 700 A-F of the 900 A-F will be delivered as a bypass of Aurora's Twin Lakes "in priority" water at or near the Twin Lakes diversion points in the Lincoln Creek Drainage near Grizzly Reservoir or its diversion points on the Roaring Fork River near Lost Man Creek. Subject to the forgoing and the following considerations the remaining 200 A-F of the 900 A-F will be released from Grizzly Reservoir generally at the end of summer and during the fall seasons consistent with the annual delivery schedule as may be modified during the Twin Lakes Water Year and the operational requirements of Twin Lakes. If not physically released from Grizzly Reservoir this remaining 200 A-F will be

bypassed instead of released from storage if hydrologic conditions and operational constraints of Twin Lakes warrant. In any event the Parties acknowledge that 200 A-F will be the maximum release to Lincoln Creek that can be made from Grizzly Reservoir storage in any year. The Parties recognize that Twin Lakes operational and infrastructure maintenance needs and stream flow needs of Lincoln Creek and the Roaring Fork River, including but not limited to turbidity, temperature, habitat, flooding, water quality and other environmental constraints, may require that these releases consist of low flows that begin in mid-summer and end in late-summer. Annual delivery of this 200 A-F of released water will be consistent with the considerations used for the 700 A-F of bypassed water described above. Typically the delivery of water to the Roaring Fork River will provide the greatest benefit in the second half of the summer, beginning July 15, through the fall season. Pitkin and Aurora acknowledge that water delivered to the Roaring Fork River by Aurora before this time, during the runoff, is not generally needed and in wet years may exacerbate flood risk. Delivered water, bypasses and releases from Grizzly Reservoir, will normally be Aurora's interest in its yield of the IPTDS. Aurora's yield from its Twin Lake's shares is delivered daily to Aurora and other Twin Lakes shareholders on a prorated basis. Aurora agrees to use best efforts to accommodate desires for late season deliveries and conversely Pitkin recognizes Aurora's delivery of water as bypasses or releases will be based upon Aurora's annual yield as currently reflected by Aurora's ownership of 2488.475 shares in Twin Lakes Reservoir and Canal Company. Nevertheless, while Pitkin and Aurora recognize neither one of them can compel aggregation of deliveries of Twin Lakes water owned by Aurora with Twin Lakes water owned by other shareholders, if circumstances allow Aurora will not require that its deliveries be limited to its daily proration of Twin Lakes yield. The Expression of Mutual Intent between Aurora and Twin Lakes, attached hereto as Exhibit F, and the expectations of Aurora and Twin Lakes contained in that letter agree with Pitkin's expectations and describe satisfaction, without modification, of the water delivery obligations contained in Section II of this Agreement. Delivery of water to the Roaring Fork will be based upon protocol described in Paragraphs 18, 19 and 20 and their subsections.

18.2 Recovery Year Reduction of Annual Water Delivery. Subject to the conditions herein stated, the 900 A-F of annual delivery and/or bypass will be reduced to 800 A-F for the subject year if Aurora's total system storage is at or below sixty percent (60%) of total capacity on any April 1. Aurora's total system storage is described in Exhibit E. Aurora agrees to update its amount of total system storage as changes occur to reflect addition or loss of storage facilities, changes in contract storage capacity, enlargement of facilities or other changes in storage volume. Annually, Aurora will communicate to the West Slope Parties its total system storage quantity on April 1 and express that amount as a percentage of total system capacity and describe the methodology for this calculation. This Recovery Year Reduction allowance will cease once Aurora's total system storage has recovered to eighty percent (80%) of total capacity and delivery of the 100 A-F will once again be subject to temporary suspension should total system storage fall to sixty percent (60%) or below. Nevertheless, the Recovery Year Reduction described in this paragraph will not apply during any year or years that Aurora's total system storage is at or below sixty percent (60%) of total capacity on any April first as a result of Aurora filling expanded system capacity resulting from construction of additional storage space, the acquisition of additional contract storage space, enlargement of existing facilities, or increase in storage volume.

19. Exchanged Roaring Fork Deliveries. Subject to the conditions stated in this paragraph 19 and the remainder of Section II of this Agreement, in the Twin Lakes Water Years following the Initiation Date Aurora may cause to be delivered for the benefit of the Roaring Fork River up to an additional 100 A-F of water annually during the diversion season that if delivered would make the amount of water delivered or bypassed to the Roaring Fork River in such a year pursuant to paragraphs 18 and 19 and their subparagraphs up to but not exceeding 1,000 A-F. Annually, prior to the initiation of diversions by Twin Lakes designated representatives of Pitkin, CRWCD, Aurora and Twin Lakes will develop subject to the terms of this Agreement detailed delivery schedules for water available under this paragraph 19 reasonably considering and reflecting the desired rate, timing, amount, location and ultimate use of the water, as well as the operational needs and constraints upon Aurora as a Twin Lakes shareholder plus constraints upon the Twin Lakes company and all Twin Lakes facilities. Pitkin, CRWCD, Aurora and Twin Lakes may consult with other appropriate parties, if any, in developing the delivery schedules. Delivery schedules may be updated from time-to-time throughout the Water Year as warranted by hydrology, operational constraints or other factors identified in this Agreement. It is recognized by the Parties that deliveries under this paragraph 19 will be conducted in a manner designed to maximize benefits to Roaring Fork River stream flows which benefits the West Slope Parties and the Colorado River basin as stated in paragraph 20. Those Parties will also invite the U.S. Bureau of Reclamation to participate in such meetings.

19.1 The Exchanged Roaring Fork Delivery will be contingent upon and limited by the following:

19.1.1 Aurora must first obtain an adjudicated right allowing the exchange of up to 900 A-F of Twin Lakes Water over which Aurora has maintained dominion and control in any one year from the confluence of the Roaring Fork and Fryingpan Rivers upstream on the Fryingpan River to Ruedi Reservoir and an additional exchange, as a component subset of the 900 A-F, up to 450 A-F in any one year from Ruedi Reservoir to Ivanhoe Reservoir located upon Ivanhoe Creek. Ivanhoe Reservoir is owned by Pueblo Water and operated by the Busk-Ivanhoe Water System Authority. The Parties acknowledge neither Pueblo Water nor the Busk-Ivanhoe Water System Authority assume any liability for any operations or activities conducted pursuant to the terms of this Agreement. Any storage of exchanged water in Ivanhoe Reservoir must be pursuant to a contract with the owner and operator of Ivanhoe Reservoir; and,

19.1.2 Pitkin must first obtain a continuing contract from the U.S. Bureau of Reclamation for "If-&-When" storage of 900 A-F of water in Ruedi Reservoir. Pitkin agrees to store at Aurora's request any water Aurora is able to exchange pursuant to sub-paragraph 19.1.1 above; and,

19.1.3 Water must be placed into Ivanhoe Reservoir pursuant to the operation of sub-paragraphs 19.1.1 and 19.1.2 above. Thereafter, during the following Twin Lakes Water Year, Aurora will deliver for the benefit of Pitkin and/or the West Slope Parties from facilities owned or controlled by Twin Lakes upon detailed delivery schedules established under paragraph 19 water in a volume equal to one-quarter of the amount

of water placed into Ivanhoe Reservoir the previous Twin Lakes Water Year up to a maximum of 100 A-F. The water placed into Ivanhoe Reservoir the previous Twin Lakes Water Year will continue to be recognized as derived from the exercise of Twin Lakes water rights and the property of Aurora. Water deliveries for the benefit of Pitkin and/or the West Slope Parties may not be carried over to succeeding Twin Lakes Water Years.

19.1.4 Aurora will have discretion to not place water into Ivanhoe Reservoir if Aurora in good faith determines 1) such would be detrimental to Busk-Ivanhoe System senior water rights, or 2) such is not in accord with any contract with the operator and owner of Ivanhoe Reservoir.

19.2 Aurora at its discretion may choose to pursue as an alternative to sub-paragraphs 19.1.1 and 19.1.2 above, adjudication of a junior storage decree for up to 450 A-F within Ivanhoe Reservoir. If such a storage right is obtained, a contract with the operator and owner of Ivanhoe Reservoir is obtained and water is stored thereunder within Ivanhoe Reservoir then during the following Twin Lakes Water Year Aurora will deliver water, in accordance with delivery schedules established under paragraph 19, from facilities owned or controlled by Twin Lakes for the benefit of the Roaring Fork River in a volume equal to one-half of the amount of water placed into Ivanhoe Reservoir the previous Twin Lakes Water Year under this junior decree up to but not exceeding a total of 1,000 A-F as pursuant to paragraphs 18 and 19 and their subparagraphs. The balance of the water placed into Ivanhoe Reservoir the previous Twin Lakes Water Year under that junior storage decree will be recognized as the property of Aurora. Water deliveries for the benefit of Pitkin and/or the West Slope Parties may not be carried over to succeeding Twin Lakes Water Years. Any such junior storage right may, at Aurora's discretion, be held jointly with the Pueblo Board of Water Works but Aurora's obligations under this Agreement shall continue.

19.3 The filing and pursuit of applications for the exchange and/or storage water rights described within this paragraph 19 by Aurora will be in its discretion and at its sole cost. If Aurora proceeds with the adjudication of either or both of the exchange or storage rights discussed within paragraph 19 then Pitkin will request and pursue the If-&-When water storage contract within Ruedi Reservoir described within this paragraph 19. Aurora agrees it will be solely responsible for the costs of obtaining any such contract. Should Pitkin successfully obtain an If-&-When water storage contract within Ruedi Reservoir described within this paragraph 19 Pitkin agrees to pay for a proportional amount of the annual costs based upon its yield in the exchange for those years when the exchange produces a benefit for the Roaring Fork River and Aurora agrees to be responsible for the remaining annual costs. Aurora agrees not to seek any exchange right that would be senior to any exchange by BWCD described in Section III, below. Should Aurora decide to pursue an application for an exchange and/or storage rights, the Parties agree to discuss, in good faith, whether Aurora should include within such application, to the extent legally allowed, the ability to beneficially use water in the Roaring Fork River below Maroon Creek, including but not limited to, use for instream flow purposes in the Roaring Fork River as administered by the Colorado Water Conservation Board ("CWCB"), for delivery to the Pitkin County Recreational In-channel

Diversion decreed in Case No. 10CW305, Water Division 5 or for use in the BWCD's augmentation plan(s).

19.4 The Parties agree any water moved into Ivanhoe Reservoir by the exchange procedure described in paragraph 19.1 retains its identity as water derived from the exercise of the Twin Lakes water rights and is not counted against any volumetric limitations of any Busk-Ivanhoe System water right including any and all Busk-Ivanhoe junior rights.

19.5 Water delivered to the Roaring Fork River as a result of an exchange into Ruedi and Ivanhoe Reservoirs pursuant to this paragraph 19 will be made consistent with the deliveries described in paragraph 18 and its subsections.

19.6 All Parties agree to not oppose any Water Court proceeding by Aurora initiated solely to obtain decreed rights of exchange or changes as necessary to move Twin Lakes water or a junior Ivanhoe Reservoir storage right in accordance with the provisions of this paragraph 19. The Parties agree they will not oppose the issuance of an If-and-When contract by the U.S. Bureau of Reclamation for storage of water as herein described. The Parties further agree to reasonably cooperate with Aurora in exploring and possibly implementing alternative locations and methods for Aurora to exchange water delivered at Grizzly Reservoir after it passes the City of Aspen for the benefit of Aurora.

20. Further Cooperation Regarding Roaring Fork Flows. In the event of any unresolved dispute concerning the rate and timing of the Roaring Fork Delivery water pursuant to paragraphs 18 or 19, Aurora, CRWCD and Pitkin, agree amongst themselves that such dispute may be resolved by adjusting the rate and timing of the Roaring Fork Delivery in order to most closely achieve improvement and increases to streamflow in the Roaring Fork River and other consumptive and non-consumptive uses that do not require any change in the character of the water delivered to the Roaring Fork River drainage at times when it is most needed and produces the most benefit for the Roaring Fork River. In the event that, following such consultation process, the CRWCD and Pitkin do not reach agreement amongst themselves regarding any adjustment in flow rate or timing of flows provided under paragraphs 18 and 19, the CRWCD will defer to the position of Pitkin. The Parties recognize that there may be times or entire water years when Pitkin and CRWCD request that no water deliveries be made to the Roaring Fork River as a consequence of substantial or sufficient river flows present in the Roaring Fork or its tributaries or because of a threat of flooding in the Roaring Fork River drainage. At such times, Pitkin and the CRWCD's request for abatement of delivery will be honored and delivery obligations will be resumed later in the year to the extent possible given considerations described in paragraph 18 and 19. The Parties further agree to reasonably cooperate with each other and Pitkin County entities in exploring and possibly implementing alternative locations and methods for increasing Roaring Fork River Flows through the City of Aspen. Should such a project be undertaken, and Aurora agrees at its discretion to financially participate, it will do so in an amount up to 1,000 A-F if available. If Aurora participates in such project, Aurora's delivery obligations set forth in paragraph 18 and 19 will be reduced by Aurora's volume of participation proportionately. Additionally, the Parties also agree and acknowledge that none of them have any intent to assert, and do not assert, that future activities under this Section II of this Agreement constitute relinquishment or abandonment of any of Aurora's ownership of any Twin Lakes water or water right. Further the Parties agree to cooperate

in the future to prevent or combat attempts to allege relinquishment or abandonment of Aurora's ownership of any Twin Lakes water or water right as a result of their activities under this Section II of this Agreement.

21. CRWCD Delivery Offset. The CRWCD is the beneficiary of portions of the rights decreed in Twin Lakes' so-called junior decree entered in WD-5, 95CW321. Thereunder, at certain times water is delivered for the benefit of CRWCD. The Parties agree that in years when water is delivered for the benefit of CRWCD pursuant to WD-5, 95CW321 the amount of water so delivered to the Roaring Fork River will reduce by an equal amount Aurora's delivery obligations under paragraph 18, above. Nevertheless, the combined release of stored water from Grizzly Reservoir pursuant to paragraphs 18 and 19 and any Grizzly Reservoir storage release made pursuant to the terms of the decree, stipulation, and implementing agreements related to WD-5, 95CW321 shall not exceed 200 A-F in any year. The Parties acknowledge and agree that this Agreement is not intended to, and does not, interpret, change, modify, revise, amend, replace, displace, supersede or otherwise impact the decree and existing stipulations entered in WD-5, 95CW321, or any existing contract or agreement related to WD-5, 95CW321.

22. Busk-Ivanhoe or Twin Lakes Facility Failure. In the event of a Busk-Ivanhoe facility (including but not limited to the Carlton Tunnel) failure or a situation requiring substantial and unusual maintenance that prevents delivery of Busk-Ivanhoe System water to WD-2 or the delivery of water contemplated in paragraphs 18 and 19, the provisions of paragraphs 18 and 19 herein will be suspended until such time as the failed facilities are repaired and operating. This same suspension will also apply if Twin Lakes experiences a failure of its Grizzly Reservoir and/or facilities thereto or planned or unplanned necessary maintenance that prevents the delivery of water contemplated in paragraph 18 and 19.

III. Fryingspan River Exchanges and Storage

23. BWCD Storage Accounts. Following the Initiation Date Aurora will provide BWCD, on a permanent basis, a storage account for the storage of up to 50 A-F of water within, and release from, Ivanhoe Reservoir in any one Reservoir Accounting Year (May 1-April 30). This storage account will be pursuant to a contract between Aurora, BWCD and the owner and operator of Ivanhoe Reservoir. BWCD will be allowed to carry over its water in this Ivanhoe Reservoir storage account from one Reservoir Accounting Year to the next but the total amount of BWCD water available for use by BWCD in Ivanhoe Reservoir storage may not exceed 50 A-F in any single Reservoir Accounting Year. Aurora will also provide BWCD on a permanent basis a Non-site Specific storage account not to exceed 50 A-F at a location or locations to be determined by Aurora within one or more storage facilities of the Aurora Water supply system. BWCD will be allowed to carry over its water in this Non-site Specific storage account from one Reservoir Accounting year to the next. Should BWCD deplete its Ivanhoe Reservoir storage account of its stored water within any one Reservoir / Accounting Year and not be able to refill this space through exchanges or substitute water supply plans, and provided that BWCD has water available to it in the Non-site Specific storage account, Aurora will replace up to 50 A-F within the Ivanhoe Reservoir storage account and take for Aurora's own use an equal amount from the Non-site Specific storage account. Both the Ivanhoe Reservoir and Non-site Specific storage accounts will

be initially filled with water available to BWCD through exchanges or substitute water supply plans that BWCD may legally operate into Ivanhoe Reservoir, and may be refilled by BWCD through exchanges or substitute water supply plans that BWCD can operate into Ivanhoe Reservoir at any time during any Reservoir Accounting Year. All storage of water in Ivanhoe Reservoir under this paragraph 23 and other operations involving Ivanhoe Reservoir pursuant to this Agreement will be conducted by Aurora so as not to impact water yields of the Busk-Ivanhoe System to its other owners. In the event of a failure of Ivanhoe Reservoir facilities or a situation requiring planned or unplanned necessary maintenance that prevents storage or releases of water as contemplated in paragraphs 23-28, the provisions of paragraphs 23-28 that cannot be executed in the event that water storage or releases are prevented will be suspended until such time as necessary maintenance, repair or replacement is completed on the failed facility. The Parties acknowledge this Agreement does not change, modify, revise, amend, replace, displace or supersede any currently existing contract or agreement between Pueblo Water and Aurora concerning the Busk-Ivanhoe Water System Authority.

24. BWCD Exchanges. BWCD will move up to 100 A-F of water into Ivanhoe Reservoir storage by adjudicated exchange or administratively approved exchanges, substitute water supply plans and/or contract exchanges that BWCD will have responsibility for obtaining. BWCD agrees to be responsible for all costs associated with any adjudication(s), substitute supply plan(s) or contract(s). Regarding the Non-site Specific storage, so long as such water remains readily available for BWCD's use, Aurora may "place" at its cost some or all of the volume of water in excess of 50 A-F that BWCD has legally and physically moved into Ivanhoe Reservoir in any one Reservoir Accounting Year into the storage facility or facilities of Aurora's choice through its internal accounting procedures or otherwise. If Aurora does not move water into Non-site Specific storage during any Reservoir Accounting Year, the volume available for use by BWCD in Ivanhoe Reservoir storage during said year may still not exceed 50 A-F. Any BWCD water remaining in Ivanhoe Reservoir storage at the end of a Reservoir Accounting Year that Aurora could have placed, but did not, into the Non-site Specific storage account during said year will be carried over into the BWCD storage accounts, and applied first to the Ivanhoe Reservoir account, for the subsequent Reservoir Accounting Year. All Parties agree to non-monetary support and non-opposition regarding any Water Court proceeding by BWCD initiated solely to obtain decreed rights of exchange to move water into Ivanhoe Reservoir, as well as any Water Court proceeding by Aurora initiated solely to obtain decreed rights of exchange to move BWCD water from Ivanhoe Reservoir into the Non-site Specific storage account, for the purpose of this Section III. All Parties further agree to non-monetary support and non-opposition to any administrative request for approval of any exchange or substitute water supply plans by BWCD initiated solely to obtain permitted rights of exchange to move water into Ivanhoe Reservoir, as well as any administrative request for approval of any exchange or substitute water supply plans by Aurora initiated solely to obtain permitted rights of exchange to move BWCD water from Ivanhoe Reservoir into the Non-site Specific storage account, for the purposes of this Section III. Aurora agrees it will assess on an objective basis any request by BWCD to Aurora for a contract exchange to move water into the storage accounts.

25. BWCD Payments to Aurora. BWCD will annually pay to Aurora the following described portion of Ivanhoe Reservoir's operation and maintenance expenses. The amount will equal one percent (1%) of the annual operations and maintenance budgeted costs for Ivanhoe Reservoir

system. This calculation shall include all costs related to Ivanhoe Reservoir and other west slope components of the Busk-Ivanhoe System. This payment will also cover all BWCD's operations and maintenance payment obligations concerning the Non-site Specific storage account. Aurora will provide an invoice to BWCD for all of the charges by November 30 of each year and payment therefor will be due within 90 days. The one percent (1%) of the annual operations and maintenance budgeted costs for Ivanhoe Reservoir system BWCD obligation is proportionate to 50 A-F. By way of example, if BWCD placed a total of five (5) A-F into Ivanhoe Reservoir during a Reservoir Accounting Year, then BWCD would owe ten (10) percent (10%) of the one percent (1%) of the annual operations and maintenance budgeted costs for Ivanhoe Reservoir system. This obligation will become effective when BWCD actually utilizes either storage account, and will lapse if BWCD relinquishes rights to use both storage accounts or upon abandonment or cancellation of BWCD water rights placed into the storage accounts.

26. Accounting Information and Evaporation Charges. As between themselves, BWCD and Aurora agree that: 1) BWCD and Aurora will provide each other with all information known and available to them and needed for accounting of the BWCD water stored in the Ivanhoe Reservoir and Non-site Specific storage accounts; and, 2) BWCD will be responsible for payment of all evaporation charges associated with any water stored in either account; and, 3) the amount of evaporation for the Ivanhoe Reservoir storage space will be proportionally determined by comparing the amount of water BWCD has in storage with the total amount in storage within Ivanhoe Reservoir; and, 4) the amount of evaporation for the Non-site specific storage space will be proportionally determined by comparing the amount of water BWCD has in storage with the total amount in storage within the facility or facilities where Aurora chooses to accommodate said water.

27. Relative Priorities of Exchanges and Storage. As of the Effective Date of this Agreement neither Aurora nor the Busk-Ivanhoe system hold any decreed, permitted or contractual rights of exchange from points on or below the Fryingpan River to Ivanhoe Reservoir. So long as BWCD is reasonably diligent in requesting and prosecuting decreed rights of exchange to move water into Ivanhoe Reservoir storage space, including such amounts as Aurora may "place" into the Non-site Specific storage space, Aurora agrees it will not seek nor operate any adjudicated exchange into Ivanhoe Reservoir, including but not limited to any exchange described in paragraph 19 above, with an administration date senior to that obtained by BWCD if such Aurora exchange would call out the BWCD exchange. Additionally, so long as BWCD is reasonably diligent in requesting and prosecuting decreed rights of exchange to move water into the 50 A-F of Ivanhoe Reservoir storage space and 50 A-F of Non-site specific storage space, Aurora agrees it will not seek nor operate the junior storage decree described in paragraph 19.2 above with an administration date senior to that obtained by BWCD for its exchange if such Aurora junior storage decree would diminish the contemplated yield of the BWCD exchange.

28. BWCD Ivanhoe Reservoir Releases, Studies and Costs. BWCD will utilize its water in the storage accounts for purposes of supplying augmentation or substitute supplies to the Fryingpan River above Ruedi Reservoir or for stream flow support in that stream reach. Absent any agreement with the CWCB for instream flow use, releases solely for stream flow support may be subject to other water users operating exchanges or otherwise diverting the water, or if also being released to replace out-of-priority depletions or for a decreed beneficial use, other water users may

operate exchanges or otherwise divert the water and provide a substitute supply for the released water, so long as the DEO ensures delivery of the released amount, minus transit losses, to any decreed point of replacement or use. BWCD may request releases of water from the storage accounts at any time and Aurora will take all reasonable steps to accommodate these requests. Aurora will not object to BWCD's use of the water placed into the storage accounts described in paragraph 23 for any legal beneficial use at any location within its service area. Although the Fryingpan River basin above Ruedi presents the most likely place of use, BWCD may find need for this supply in other locations within its service area, and if so Aurora will not object thereto. BWCD and Aurora acknowledge the Ivanhoe Reservoir is situated at high altitude and winter season releases will pose challenges. Nevertheless BWCD and Aurora agree to reasonably assist one another and to employ temperature appropriate and situationally reasonable methods in overcoming such challenges. Initially, BWCD and Aurora will cooperatively seek agreement with the CWCB that might allow BWCD to avoid winter releases. Concurrently, Aurora and BWCD agree to cooperatively study various methods of accomplishing winter releases if such are necessary and Aurora agrees it will pay for the initial feasibility study up to \$25,000 for such study. In addition to that investigation, BWCD agrees to study the potential for other winter augmentation sources such as releases from other impoundments tributary to the Fryingpan River. BWCD agrees to pay all costs for this investigation. If Ivanhoe Reservoir releases are still determined to be required, then Aurora and BWCD agree to pay one-half each up to a joint total of \$260,000.00 (up to \$130,000 each) for any necessary construction and installation of facilities that, in the exercise of non-arbitrary good faith, both Aurora and BWCD determine are necessitated by the study. Both entities must agree to the development of the project determined from the study and each will pay equal amounts for the project development. BWCD agrees it will pay for the hydrologic modeling of the Fryingpan Basin needed to support the exchange requests for movement of water into Ivanhoe Reservoir. BWCD will share the hydrologic modeling it develops with Aurora. Aurora will conduct and pay for a capacity survey of Ivanhoe Reservoir if needed for this study. Aurora will share the capacity survey with BWCD. As of the Effective Date Aurora and BWCD have identified the following three potential winter-release alternatives: 1) siphon pipeline; 2) small pump station and pipeline; and 3) a jack and bore pipeline conveying water around Ivanhoe Reservoir by gravity flow. These alternatives are listed by way of example and are not meant to exclude other agreed upon methods including, but not limited to, approved slug releases. Aurora and BWCD agree their rights and obligations under this Section III are conditional upon entry of a contract between Aurora, BWCD and the owner and operator of Ivanhoe Reservoir authorizing BWCD's use of Ivanhoe Reservoir as they agree for the purposes of Section III. Aurora and BWCD agree they will actively cooperate in diligent good faith attempts to obtain required authorization for such use of Ivanhoe Reservoir and to implement the provisions of Section III of this Agreement. If despite such efforts such authorization is not obtained Aurora agrees it will pay up to \$130,000.00 discussed above toward alternative solutions to make 50 A-F of water available to BWCD tributary to the Fryingpan River that does not involve use of Ivanhoe Reservoir.

29. BWCD Support of Box Creek Reservoir and No Changes to Busk-Ivanhoe Agreements. In view of the agreements in this Section III, BWCD specifically acknowledges Aurora is working toward developing a water reservoir in Lake County, Colorado referred to as the Box Creek Reservoir, generally described in Exhibit B. BWCD agrees to acknowledge its support for Aurora's development of Box Creek Reservoir in writing in the form of Exhibit C, attached, as may be requested by Aurora. This Agreement does not change, modify, revise or amend any other

contract or agreement between any of the Parties and B-I Inc. Aurora agrees that it will not request B-I Inc. to perform any illegal operations or activities. The Parties acknowledge this Agreement does not change, modify, revise, amend, replace, displace or supersede any currently existing contract or agreement between Aurora, B-I Inc., the Busk-Ivanhoe Water System Authority or Pueblo Water concerning the Busk-Ivanhoe System.

IV. Shoshone Outage Protocol & Shoshone Permanency

30. ShOP Agreement. The Shoshone Power Plant is a mainstem hydroelectricity plant with generation facilities located adjacent to the mainstem of the Colorado River downstream from its confluence with Shoshone Creek and west of Exit 125 of Interstate Highway 70 (“SPP”). The SPP is currently owned and operated by Public Service Company of Colorado, d/b/a Xcel Energy (“PSCo”). The SPP has a senior hydropower water right with a 1902 Appropriation for 1250 cfs (“Senior Hydropower Right”) and a junior hydropower water right with a 1929 Appropriation for 158 cfs (“Junior Hydropower Right”). The Senior Hydropower Right and the Junior Hydropower Right are collectively referred to for purposes of this Agreement as the “SPP Water Rights.” Several entities,¹ some of whom are parties to this Agreement entered into an Agreement dated June 27, 2016 referred to as the Shoshone Outage Protocol (US Bu Rec Agreement No. 13XX6C0129) (“ShOP Agreement”). The parties to the ShOP Agreement 1) recognized when the SPP is operating its river call it can command the flow of the Colorado River and certain tributaries in certain stream conditions by exercising the Senior Hydropower Right against upstream junior water rights; 2) recognized whenever the SPP is not operating because of repairs, maintenance or other reasons, the SPP river call cannot be exercised and upstream junior water rights would be able to divert water; 3) recognized a desire of some to maintain the flow regimen of the Colorado River as historically influenced by the Senior Hydropower Right; and 4) agreed among themselves to implement certain operating procedures during times when the SPP was not operating. Included within the ShOP Agreement were provisions when certain parties thereto would not divert under their water rights per the operating procedures.

31. Aurora Ownership.

31.1 The Parties acknowledge Aurora is the owner of one-half of the Homestake System which system includes, inter alia, the Homestake water rights first decreed in Eagle County District Court Case No. CA-1193 with Appropriation dates of 1952. The Parties further acknowledge that as a one-half owner of the Homestake System Aurora cannot bind, and is not binding, the owner of the other one-half of the Homestake System, Colorado Springs-Utilities, to any of the provisions hereof. In view of the forgoing Aurora agrees that, subject to the further terms and provisions herein stated, it will subject its one-half of the Homestake water rights to the terms herein following. The Parties acknowledge this Agreement does not change, modify, revise, amend, replace, displace or supersede any currently existing contract or agreement between the City of Colorado Springs and Aurora concerning the Homestake System (“Homestake Agreements”).

¹ US Bureau of Reclamation, Colorado Division of Water Resources, Denver Water Board, CRWCD, Middle Park WCD, Northern Colorado WCD & its Municipal Subdistrict, Grand Valley Water Users Association, Orchard Mesa Irrigation District and the Grand Valley Irrigation Company

31.2 The Parties acknowledge Aurora is the owner of two-thirds of the outstanding shares of the Fremont Pass Ditch Company (“FPDC”) which Company owns Columbine Ditch water rights decreed in Civil Action No. 963, District Court for Eagle County, WD-5, 90CW340, 09CW187 and 09CW188. The Parties further acknowledge that as a two-thirds owner of the FPDC Aurora cannot bind, and is not binding, the owner of the other one-third of the FPDC, the Climax Molybdenum Company (“CMC”), to any of the provisions hereof including anything that may interfere with CMC’s rights under any FPDC operating agreement, contracts or practices. Those CMC rights include, inter alia, the right to use all of the water available by the FPDC rights within any given year. In view of the forgoing Aurora agrees that, subject to the further terms and provisions herein stated, it will subject its two-thirds of the FPDC water rights, when the same are not otherwise available to CMC, to the terms herein following.

32. Term of Aurora ShOP Agreement. The initial term of Aurora’s agreement regarding its one-half of the Homestake water rights and two-thirds of the FPDC water rights in accordance with the ShOP Agreement as herein specified (“Aurora ShOP”) will be until June 27, 2056. This period will commence immediately following the Initiation Date as described in Section I. of this Agreement.

33. Aurora ShOP Agreement. Under this Aurora ShOP, if the SPP is not calling because of repairs, maintenance or other reasons and flow at the Dotsero Gauge is less than or equal to 1,250 cfs (not including Shepherded Stream Flow Reservoir Releases²) Aurora agrees to operate its one-half of the Homestake water rights and two-thirds of the FPDC water rights as if the Senior Hydropower Right was calling for a flow of 1,250 cfs at the Dotsero Gauge. Aurora agrees that if it acquires or appropriates any water rights that are junior to and legally and physically subject to the Senior Hydropower Right call, then Aurora will operate such right pursuant to the Aurora ShOP in accordance with the terms of this Agreement.

33.1 During Aurora ShOP Operations defined in paragraph 33 above, Aurora agrees that, with respect to its one-half interest in the Homestake Project, the West Slope parties to the 2010 Consolidated Water Exchange Agreement between Aurora, CRWCD and others (the “2010 Consolidated Exchange Agreement”) may operate exchanges into the 4,000 acre foot portion of West Slope credit available pursuant to the 2010 Consolidated Exchange Agreement at Homestake Reservoir. If the 4,000 acre foot West Slope credit available pursuant to the 2010 Consolidated Exchange Agreement at Homestake Reservoir is full or if the West Slope parties to that agreement do not operate under that exchange, then Aurora will operate its one-half of the Homestake water rights and two-thirds of the Fremont Pass Ditch

² The Parties adopt the definition of Shepherded Streamflow Reservoir Releases and considerations thereof as set forth in the ShOP Agreement. In the ShOP Agreement Shepherded Streamflow Reservoir Releases are defined as those reservoir releases made for the reservoir owners’ purposes of increasing stream flows either at the Shoshone Power Plant, in the 15-Mile Reach, or at other stream locations at the rates and volumes of the reservoir releases, provided such releases are made for decreed beneficial uses for instream or in-channel purposes at any such locations including, but not limited to, endangered fish species purposes within the 15-Mile Reach. The 15-Mile Reach is the reach of the Colorado River which extends from the point at which the tailrace common to the Grand Valley Power Plant and the Orchard Mesa Irrigation District pumping plant returns to the Colorado River below the Grand Valley Irrigation Company diversion dam, downstream to the confluence of the Colorado River and Gunnison River.

Company water rights as if the Senior Hydropower Right was calling for a flow of 1,250 cfs at the Dotsero Gauge set forth in paragraph 33 above.

33.2 Voluntary Lease During Aurora ShOP operations. If the 4,000 acre foot West Slope credit available pursuant to the 2010 Consolidated Exchange Agreement at Homestake Reservoir is full during Aurora ShOP operations, then Aurora may choose to lease from the CRWCD, on a one-year spot-market basis (i.e., if-available), up to 500 acre feet from the CRWCD's Wolford Mountain Reservoir water marketing pool for replacement purposes by Aurora. The CRWCD agrees that, due to the unique nature of this Agreement and the mutual compromises included herein, the rate of any such lease shall not be greater than two times the CRWCD's then-current spot-market lease rate for in-basin municipal use. The form of such lease will be generally consistent with the CRWCD's then-current standard form contract, the current version of which is attached for example purposes only as Exhibit D attached to this Agreement. The Parties agree to not oppose Aurora's efforts to use water leased pursuant to this paragraph 33.2 by exchange or substitute supply for replacement purposes in accordance with the priority system.

33.3 Drought Exception to Aurora ShOP. If the following two conditions exist ("Drought Triggers") as of April 1, and for the duration of such period that both conditions exist, Aurora will not be required to follow the Aurora ShOP: 1) the "most probable" forecast of streamflow prepared by the Natural Resources Conservation Service (or such other forecast as the CRWCD and Aurora agree to use) indicates the April – July un-depleted streamflow at the Colorado River near Dotsero Gauge will be less than or equal to the eighty-five percent (85%) of average; and 2) Aurora's total system storage is at or below sixty percent (60%) of total capacity on April 1 and has not reached eighty (80%) of total capacity at any time thereafter. For purposes of this Agreement, Aurora's total system storage is defined as set forth on Exhibit E to this Agreement.

33.4 "Paper-fill" Accounting during Aurora ShOP Operation. The Parties acknowledge the Colorado State Engineer's administrative practice of "Paper-fill" accounting. Generally, under this administrative practice, if a storage facility is in-priority and can store water but the operator(s) thereof choose not to store water, then the State Engineer or his/her designee account for the water storage right as though water was physically placed into storage or otherwise diverted. The Parties acknowledge that pursuant to the Colorado State Engineer's current administration regarding ShOP Agreement operations, bypasses made in the current year are only accounted for under that year's storage volume and are not accounted for under the storage volume in the next Homestake Reservoir Water Year (November – October 31). If future administrative actions by the Colorado State Engineer require that bypasses under the Aurora ShOP made in the then-current year are accounted against the Homestake Reservoir storage decree under both the current year and following years' storage volume, then, if as a result of Aurora's operations under Aurora ShOP, the "Paper-Fill" accounting against Aurora's Homestake water rights exceeds 500 A-F in the then-current storage season, the Aurora ShOP Operation will be excused for the remainder of that storage season and the subsequent year(s) to the extent of and so long as such "Paper-Fill" that exceeds 500 A-F. Alternatively, Aurora may choose to lease from any West Slope supplier or the CRWCD's Wolford Mountain Reservoir water marketing pool, on a one-year spot-market basis (i.e., if-

available), up to the amount of any Paper-fill for the then current storage season for exchange and replacement purposes by Aurora so that Aurora may divert and store water at its facilities and so that water will be released from Wolford Mountain Reservoir or other sources as a component of achieving the flow related goals of the Aurora ShOP. The CRWCD agrees that, due to the unique nature of this Agreement and the mutual compromises included herein, the rate of any such lease shall not be greater than two times the CRWCD's then-current spot-market lease rate for in-basin municipal use. The form of such lease will be generally consistent with the CRWCD's then-current standard form contract, the current version of which is attached for example purposes only as Exhibit D attached to this Agreement. The Parties agree to not oppose Aurora's efforts to use water leased pursuant to this paragraph 33.4 by exchange or substitute supply for replacement purposes in accordance with the priority system.

33.5 Aurora agrees that it will not divert or exchange any of the water released or bypassed by any party pursuant to the ShOP Agreement or otherwise operate its system or water rights in a manner that will diminish the benefit of the ShOP Agreement to the stream system of the flows of up to 1,250 cfs at the Dotsero Gauge.

34. Shoshone Permanency. CRWCD, BWCD, Eagle, GVVUA, OMID and Ute (in addition to other western slope entities who are not parties to this Agreement) seek to achieve permanent protection of the flow regime created by operation of the SPP regardless of whether the SPP continues to operate in the future ("Shoshone Permanency"). Aurora agrees to not oppose Shoshone Permanency as follows:

34.1 Aurora will not oppose a sale or other form of transfer of interest by PSCo of its SPP and/or SPP Water Rights, including any contractual interest therein, to the CRWCD or any other West Slope entity or consortium containing West Slope entities for the purpose of achieving Shoshone Permanency.

34.2 Aurora will not seek to acquire or participate in the acquisition of the SPP and/or the SPP Water Rights. Except as may occur with respect to a potential acquisition of the SPP and/or SPP Water Rights or interest therein by a West Slope entity consistent with paragraph 34.1, above, Aurora will not support the acquisition of the SPP and/or the SPP Water Rights itself or by any other entity.

34.3 The Parties recognize the existence of that certain 2007 Agreement Concerning Shoshone Call between the City and County of Denver, acting by and through its Board of Water Commissioners ("Denver Water") and PSCo (the "2007 Call Reduction Agreement"). The 2007 Call Reduction Agreement provides, that under certain defined drought conditions, Denver Water is entitled to pay PSCo to reduce (or "relax") the call of the SPP Water Rights. The Parties further recognize that Article VI.E.2 of the 2012 Colorado River Cooperative Agreement provides that Denver Water, with the support of the West Slope signatories, may request PSCo to amend the 2007 Call Reduction Agreement to "relax" the call of the SPP Water Rights to 704 cfs, during extreme drought conditions, for an expanded period during the winter months subject to certain terms and conditions described in CRCA Article VI.E.2.a-e ("CRCA Winter Call Reduction"). Aurora agrees that it will not seek or support any

additional “relaxation” of the SPP Water Rights, except as expressly provided for in paragraphs 34.4.1. and 34.4.2. below.

34.4 Aurora will not oppose an agreement between a West Slope entity or entities, the CWCB, and any other entity entered for the purpose of adding instream flow as an additional use of the Senior Hydropower Right (“CWCB Agreement”). In addition thereto, Aurora will not oppose the entry of a final water court decree for the purpose of adding instream flow as an additional use of the Senior Hydropower Right (“ISF Application”). Aurora’s non-opposition to any such CWCB Agreement and ISF decree shall be contingent on inclusion of the following terms in the CWCB Agreement and ISF Application:

34.4.1 The 2007 Call Reduction Agreement, including any future amendment providing for a CRCA Winter Call Reduction, will be made permanent and made applicable to any ISF use of the Senior Hydropower Right.

34.4.2 In the event of a curtailment, or valid threat or expectation thereof, resulting from a call upon the waters of the State of Colorado resulting from enforcement of the Colorado River Compact and/or the Upper Colorado River Basin Compact, the Parties to the CWCB Agreement will work cooperatively with flexibility among themselves and other water users, including Aurora, toward a goal of minimizing or avoiding desperate adverse impacts to entities on either side of the Continental Divide.

34.5 Aurora recognizes that the West Slope Parties, upon acquiring any interest in the SPP Water Rights, may also request that instream flow uses be added as an additional use to the Junior Hydropower Right. Aurora agrees to participate in good faith discussions and negotiations with the West Slope Parties, the CWCB, and any other parties regarding the addition of instream flow uses to the Junior Hydropower Right. Any agreement with the CWCB and any water court decree adding instream flow uses to the Junior Hydropower Right will at a minimum be subject to the terms identified in paragraphs 34.4.1 and 34.4.2 above. Additionally, the West Slope Parties agree to diligently meet and negotiate in good faith with Aurora regarding the inclusion of Aurora’s Drought Exceptions, described in paragraph 33.3, to any final agreement with the CWCB for any instream uses of the SPP Water Rights in excess of 1,250 cfs.

34.6 After instream flow use has been added as an alternate use of the Senior Hydropower Right and/or Junior Hydropower Right, the CRWCD agrees that, during a drought period that meets the drought conditions described in paragraph 33.3, above, Aurora may choose to lease from any West Slope supplier or the CRWCD’s Woford Mountain Reservoir water marketing pool, on a one-year spot-market basis (i.e., if-available), up to the amount of any shortage in fill for the then current storage season for replacement purposes by Aurora. The CRWCD agrees that, due to the unique nature of this Agreement and the mutual compromises included herein, the rate of any such lease shall not be greater than two times the CRWCD’s then-current spot-market lease rate for in-basin municipal use. The form of such lease will be generally consistent with the CRWCD’s then-current standard form contract, the current version of which is attached for example purposes only as Exhibit D

attached to this Agreement. The Parties agree to not oppose Aurora’s efforts to use water leased pursuant to this paragraph 34.6 by exchange for replacement purposes in accordance with the priority system. The lack of water available for lease by the CRWCD to Aurora on a spot-market basis pursuant to this paragraph 34.6 shall not excuse operation of Aurora’s water rights in accordance with the priority system as junior to, and subject to, the call of the SPP Water Right being exercised for instream flow purposes.

35. Other Provisions. As hereinafter described the following agreements are made.

35.1 Some of the Parties are among the numerous entities that comprise the Upper Colorado River Wild and Scenic Alternative Management Plan Stakeholder Group (“UPCO SG”). The Parties agree to support the recognition of the ShOP and Shoshone Permanency provisions of this Agreement as a cooperative measure and/or long term protective measure submitted by the Parties that are members of the UPCO SG for the benefit of river Segment 7 (immediately downstream of the confluence of the Eagle and Colorado Rivers to one-half mile east of No Name Creek).

35.2 The Parties, except any Party that is a permitting authority for the Eagle River MOU process³, will not to seek as a condition of any Eagle River MOU permitting process minimum base flows in the Colorado River at the current location of the Dotsero Gauge in excess of the total of the SPP water rights described in paragraph 30. However, this provision shall not prevent the Parties from advocating for high flow season channel maintenance and channel flushing flows.

V. Diligence Détente

36. Diligence Cases. The Parties either individually or through association have interests in certain conditionally decreed water rights that arise in Water Division 5 as more thoroughly described as follows:

36.1 Aurora:

WATER DIVISION 5

Next Diligence Deadline	Case Number	Applicant	Case Name
	W-1869 (10/2/1979) 82CW151 86CW155 92CW136 00CW228	Twin Lakes Reservoir and Canal Company	New York Collection Canal Supplement

³ The Eagle River MOU is a 1998 agreement between Aurora, Colorado Springs, CRWCD, Cyprus Metals Company (Climax), and the Vail Consortium (Eagle River W&SD, Upper Eagle Regional Water Authority and Vail Associates Inc.) that, *inter alia*, proposes certain joint use projects.

	07CW199 16CW3011 (Pending)		
	88CW449 (7/16/2002) 08CW111 (2/24/2010) 16CW3022 (9/17/17)	Homestake Partners	Camp Hale
	95CW272(A) (3/16/2011) 17CW3064 (Pending)	Homestake Partners	Homestake II
8/31/2019	09CW188 (8/4/2013)	Fremont Pass Ditch Company	Columbine Ditch Junior Water Right
2/28/2020	CA-1193 (7/10/1968) W-45 (6/14/1971) W-620 (6/14/1973) W-2321 (12/12/1974) W-2321-78 (8/19/1980) 82CW120 (9/27/1984) 86CW141 (3/6/1987) 90CW117 (3/14/1994) 00CW037 (10/2/2000) 06CW225 (9/16/2007) 13CW3045 (2/9/2014)	Homestake Partners	Original Homestake Project
6/30/2023	98CW270 (2/6/2003) 09CW17 (10/11/2010) 16CW3131 (6/13/2017)	Homestake Partners et al	Roaring Fork and Homestake Exchanges
5/31/2015	CA-3082 W-64 W-722 W-722-76 80CW180 84CW162 88CW206 94CW105 01CW057 07CW145 (5/27/2009) 15CW3050 (Pending)	Twin Lakes Reservoir and Canal Company	Roaring Fork Diversion Dam Gulch Collection Canal and Lost Man Diversion Dam, components of IPTDS
5/31/2018	CA-4613 W-829 01CW265 09CW40	Southeastern Colorado Water Conservancy District	Roaring Fork and Fryingpan Project Facilities

36.2 CRWCD:

Next Diligence Deadline	Case Number	Name of Structure
BASALT PROJECT:		
Aug 2020	CA 4613(58); CA 4613 (66); W-44; W-789(76); 80CW94; 84CW70; 88CW85; 95CW52; 03CW41; 11CW96	Basalt Conduit; Basalt Power Plant & Penstock; Landis Canal; Spring Valley Siphon; Stockmen's Ditch Ext. & Enlargement
BATTLEMENT MESA PROJECT:		
Nov 2018	13368 (Mesa); 05CW8; 11CW172	Brush Creek Canal; Buzzard Creek Dam & Reservoir; Colorado Canal; Harrison Canal; Owens Creek Reservoir
KOBE PROJECT:		
June 2022	C.A. 6404 (Garfield); W-789(76); 80CW94; 84CW63; 88CW83(88)(92); 94CW187; 01CW17; 07CW119; 15CW3055	Kobe Canal; Kobe Canal Alternate Point; Mount Logan Canal; Mount Logan Dam & Reservoir; Roan Creek Feeder Canal
FRASER VALLEY PROJECT:		
Dec 2019	84CW551; 84CW552; 84CW553; 93CW139; 93CW140; 93CW141; 99CW227; 06CW92; 13CW46	Fraser Feeder Canal; Fraser Pumping Plant & Pipeline; Ranch Creek Reservoir
REDCLIFF PROJECT:		
Aug 2018	W-3472; 83CW30; 87CW8; 94CW13; 00CW105; 03CW41; 11CW94	Cross Creek Extension of the Fall & Peterson Creek Conduits
Aug 2018	CA 1193 (62)(65)(66)(68); W-56; W-789(76); 80CW94;	Iron Mountain Reservoir, Pando Feeder Canal

Next Diligence Deadline	Case Number	Name of Structure
	84CW70; 88CW85; 95CW52; 03CW41; 11CW94	
Aug 2018	81CW345; 90CW95; 96CW264; 03CW41; 119CW94	Iron Mountain Reservoir, 2 nd Filling
EAGLE PINEY PROJECT:		
Dec 2021	CA1548; 02CW125; 13CW3079	Piney River Unit
WEST DIVIDE PROJECT:		
April 2020	CA 4613(58)(66); CA 4954; CA 5584; W-44; W-789(76); W-3888; 79CW308; 79CW315; 80CW94; 84CW70; 88CW85; 95CW52; 03CW41; 11CW93	Avalanche Canal & Siphon; Dry Hollow Feeder Canal; Dry Hollow Reservoir; Four Mile Canal & Siphon; Horsethief Canal; Kendig Reservoir; Kendig Reservoir 1 st Enlargement; West Divide Canal; West Mamm Creek Reservoir
WOLCOTT PROJECT (Water Division 5):		
Oct 2018	CA 1529 (Eagle); 80CW94; 84CW70; 88CW85; 95CW52; 03CW41; 11CW95	Wolcott Pumping Pipeline; Wolcott Reservoir
WOLFORD MOUNTAIN RESERVOIR PROJECT (WMR):		
Aug 2020	91CW252; 02CW81; 09CW14	WMR/Green Mtn Substitution
April 2023	87CW284; 95CW251; 02CW107; 09CW81; 16CW3082	Gunsight Pass Reservoir Power Right (WMR)
Oct 2020	03CW302	WMR 2 nd Enlargement

Next Diligence Deadline	Case Number	Name of Structure
Jan 2020	98CW237; 06CW146; 13CW3008	WMR Refill Right
June 2023	98CW270; 09CW17; 09CW28; 16CW3131	Homestake Reservoir Exchange
Jan 2024	05CW265; 17CW3100	WMR Moser Exchange

36.3 BWCD:

Next Diligence Deadline	Case Number	Applicant	Name of Water Rights
	02CW077 (1 of 2) 17CW3256 (Pending)	BWCD	Any and all conditional water rights, including appropriative rights of exchange
December, 2018	02CW077 (2 of 2)	BWCD	Any and all conditional water rights, including appropriative rights of exchange
July, 2020	11CW096	BWCD / CRWCD	Any and all conditional water rights including: <ul style="list-style-type: none"> - Basalt Conduit - Landis Canal - Spring Valley Siphon - Stockman's Ditch Extension and Enlargement - Basalt Power Plant and Penstock

36.4 Pitkin:

Next Diligence Deadline	Case Number	Applicant	Name of Water Right
Pending Decree	17CW3204	Pitkin County Board of County Commissioners (PCBOCC)	Pitkin County Airport Exchange
March 2018	11CW35	PCBOCC	Paepcke Well and Pitkin County Airport well field
July 2018	11CW55	PCBOCC	Pitkin County Landfill Ponds
June 2020	10CW305	PCBOCC	White Water Park RICD
July 2022	16CW3016	PCBOCC	Bivert Ditch Second Enlargement

36.5 Eagle:

Next Diligence Deadline	Case Number	Applicant	Name of Water Rights
March, 2018	05CW161	Eagle / Crown Mountain Park and Recreation District	Any and all conditional water rights including: - Mt. Sopris Tree Nursery Well No. 1, First Enl. - Mt. Sopris Tree Nursery Well No. 3, First Enl. - Mt. Sopris Tree Nursery Well No. 4, First Enl. - Mt. Sopris Tree Nursery Well No. 5 - Crown Mountain Pond

36.6 Ute:

36.8.1. The conditional water rights decreed to the following structures, all of which are more specifically described in the diligence decree entered in Case No. 2011CW53, District Court, Water Division No. 5:

- 36.8.1.1 Atwell East Ditch, Supplemental Point of Diversion, Component of the Ute Water Conservancy District Water System, in the amount of 2.82 c.f.s., conditional.
- 36.8.1.2 Atwell Waste & Seep Water Ditch Component of the Ute Water Conservancy District Water System, in the amount of 0.06 c.f.s., conditional.
- 36.8.1.3 Big Park Reservoir Component of the Ute Water Conservancy District Water System, in the amount of 5650 acre feet, conditional.
- 36.8.1.4 Bridges Switch Pumping Plant and Pipeline Component of the Ute Water Conservancy District Water System, in the amount of 30 c.f.s., conditional.

- 36.8.1.5 Coon Creek Pipeline Component of the Ute Water Conservancy District Water System, in the remaining conditional amount of 0.4 c.f.s.
- 36.8.1.6 Coon Creek Pipeline Enlargement, in the amount of 1.5 c.f.s., conditional.
- 36.8.1.7 Jerry Creek Reservoir No. 2 Component of the Ute Water Conservancy District Water System (Jerry Creek Priority), in the amount of 7,791 acre feet, conditional.
- 36.8.1.8 Ute Pumping Station and Pipeline Component of the Ute Water Conservancy District Water System, in the amount of 50 c.f.s., conditional.
- 36.8.1.9 Kirkendall Reservoir, also known as Hunter Reservoir, in the amount of 582.49 acre feet, conditional.
- 36.8.1.10. Kirkendall Reservoir (“Hunter Reservoir”), Ute Water Enlargement, in the amount of 1,340 acre feet, conditional.

A diligence application for all of the above described conditional water rights was filed in March, 2018.

36.8.2 The conditional water right decreed to Monument Reservoir No. 1, Ute Water Enlargement, in Case No. 2009CW30, District Court, Water Division No. 5, in the amount of 4,682 acre feet, conditional. A diligence application for this conditional water right was filed in March, 2018.

36.8.3 The conditional water right decreed to Willow Creek Reservoir in Case No. 2009CW29, District Court, Water Division No. 5, in the amount of 19,448 acre feet, conditional. A diligence application for this conditional water right was filed in March, 2018.

36.8.4 The conditional water rights decreed to the following structures, both of which are more specifically described in the diligence decree entered in Case No. 2011CW172, District Court, Water Division No. 5:

- 36.8.4.1 Owens Creek Reservoir, in the amount of 31,786.1 acre feet, conditional. Ute owns an undivided 22.5% interest in this conditional water right.
- 36.8.4.2 Buzzard Creek Dam and Reservoir, in the amount of 20,000 acre feet, conditional. Ute owns an undivided 22.5% interest in this conditional water right.

The next diligence application for the above described conditional water rights is due to be filed in November, 2018.

37. Non-opposition to Diligence. The Parties agree that they will not oppose any Water Court filing for any of the above listed matters requesting only a finding of reasonable diligence and a continuation of such water right(s) for a period of 15-years following the Initiation Date of this Agreement. Filings, or portions of filings, requesting a determination(s) a water right(s) was (were) made absolute are not subject to these non-opposition provisions. In circumstances when a diligence request is made in the same case as a request to make absolute is also made, Parties

will be free to participate in the portion of such case dealing with any absolute request while not participating in the diligence portion. Regarding cases noted as “Pending” in paragraph 36, all Parties who are existing opposers in such a matter are not restricted as to their continued opposition, if any, in said pending case(s).

VI. Entry of Final Decree in WD-2, 09CW142

38. Motion for Entry of Decree. Pursuant to the provision of paragraph 3 above, the Parties will seek entry of the Draft Decree attached hereto as Exhibit A.

* * * *

DRAFT

CITY OF AURORA, COLORADO,
ACTING BY AND THROUGH ITS
UTILITY ENTERPRISE

Marsha Berzins, Mayor Pro Tem

Date

ATTEST:

Linda Blackston, City Clerk

Date

APPROVED AS TO FORM FOR AURORA:

Christine McKenney
Senior Assistant City Attorney

Date

ACS #

John Dingess, Special Counsel

Date

STATE OF COLORADO)
) ss
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by Stephen D. Hogan, Mayor, acting on behalf of the Utility Enterprise of the City of Aurora, Colorado.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(SEAL)

BUSK-IVANHOE, INC.

a Colorado mutual ditch company

By: _____
President

ATTEST:

By: _____
Secretary

STATE OF COLORADO)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____, President of Busk-Ivanhoe Inc.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(SEAL)

COLORADO RIVER WATER CONSERVATION DISTRICT

By: _____
Tom Alvey, President

Attest:

By: _____
Andrew A. Muller, Secretary/General Manager

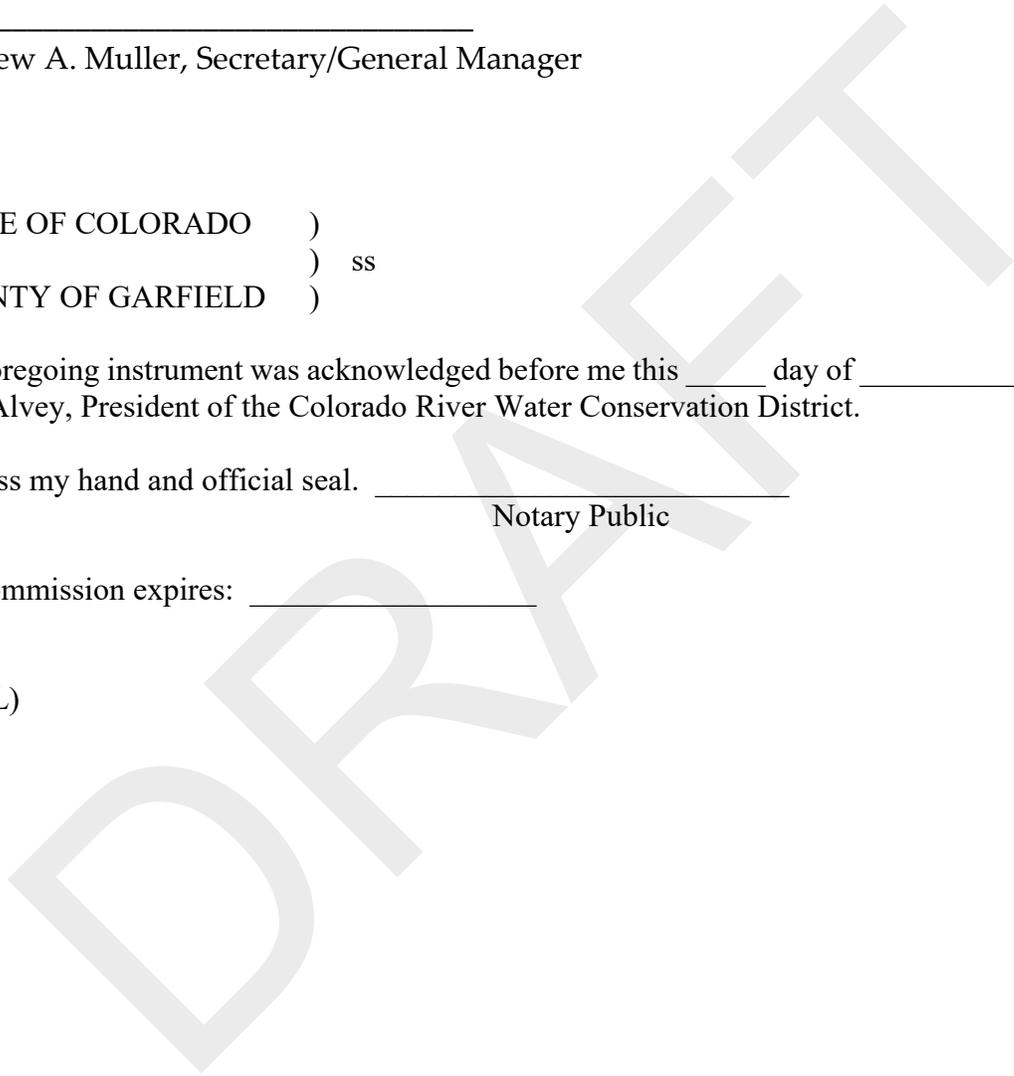
STATE OF COLORADO)
) ss
COUNTY OF GARFIELD)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by Tom Alvey, President of the Colorado River Water Conservation District.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(SEAL)



COUNTY OF EAGLE, STATE OF COLORADO,
By and Through Its
BOARD OF COUNTY COMMISSIONERS

By: _____
Kathy Chandler-Henry, Chair

Attest:

By: _____
Regina O'Brien, Clerk to the Board

STATE OF COLORADO)
) ss
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by
Kathy Chandler-Henry, Chair.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(SEAL)

BASALT WATER CONSERVANCY DISTRICT

By: _____
Don Boyer, President

Attest:

By: _____
Scott Leslie, Secretary

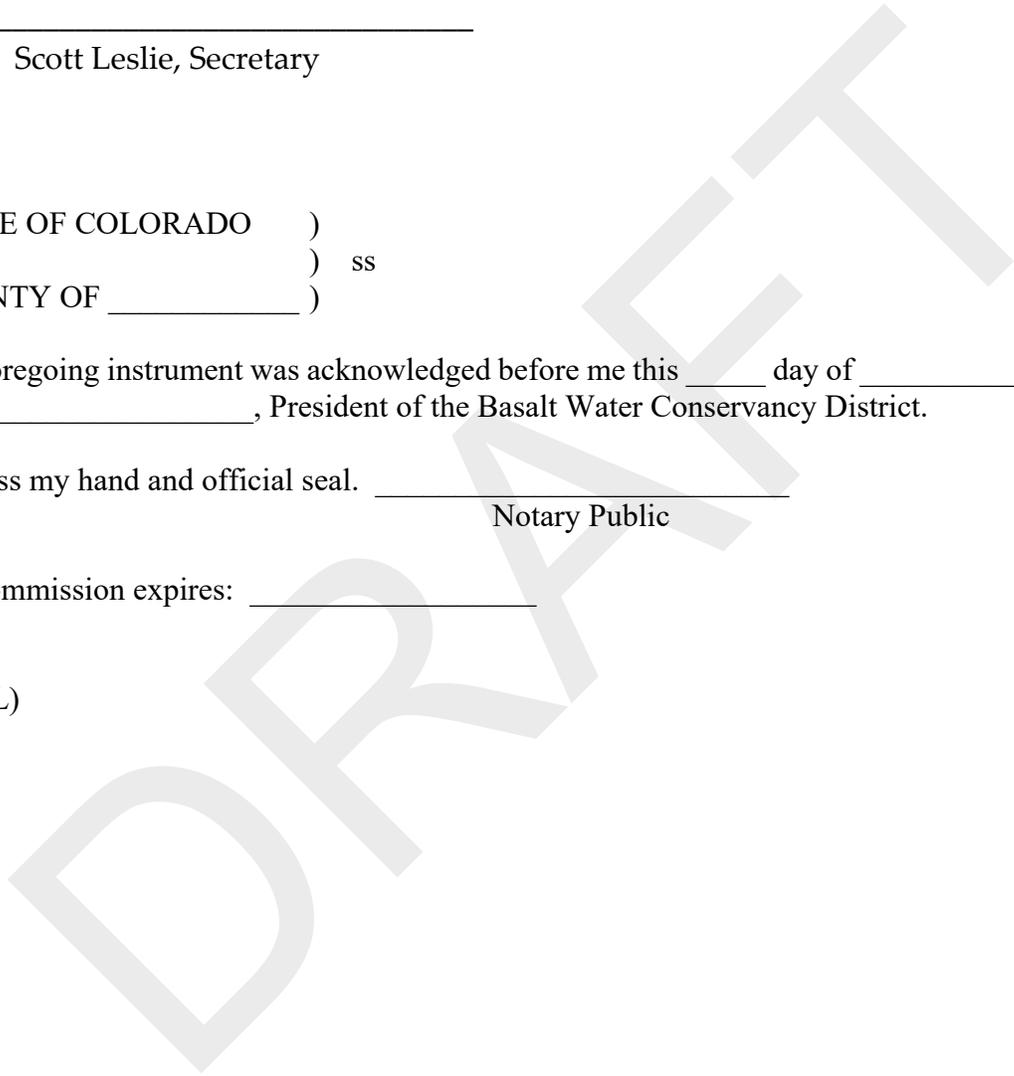
STATE OF COLORADO)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____, President of the Basalt Water Conservancy District.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(SEAL)



BOARD OF COUNTY COMMISSIONERS
OF PITKIN COUNTY

By: _____
Patti Clapper, Chair

Date: _____

ATTEST

By: _____
Jeanette Jones
Deputy County Clerk

APPROVED AS TO FORM:

By: _____
John M. Ely
Pitkin County Attorney

By: _____
Jon Peacock,
Pitkin County Manager

STATE OF COLORADO)
) ss
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by Patti Clapper, Chair.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(SEAL)

GRAND VALLEY WATER USERS ASSOCIATION

By: _____

Joseph C. Bernal, Board President

Attest:

By: _____

D. Kim Albertson, Board Secretary

STATE OF COLORADO)

) ss

COUNTY OF MESA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by Joseph C. Bernal, Board President of the Grand Valley Water Users Association.

Witness my hand and official seal. _____

Notary Public

My commission expires: _____

(SEAL)

ORCHARD MESA IRRIGATION DISTRICT

By: _____

Bruce Talbott, Board President

Attest:

By: _____

Melvin Rettig, Board Vice President and Secretary

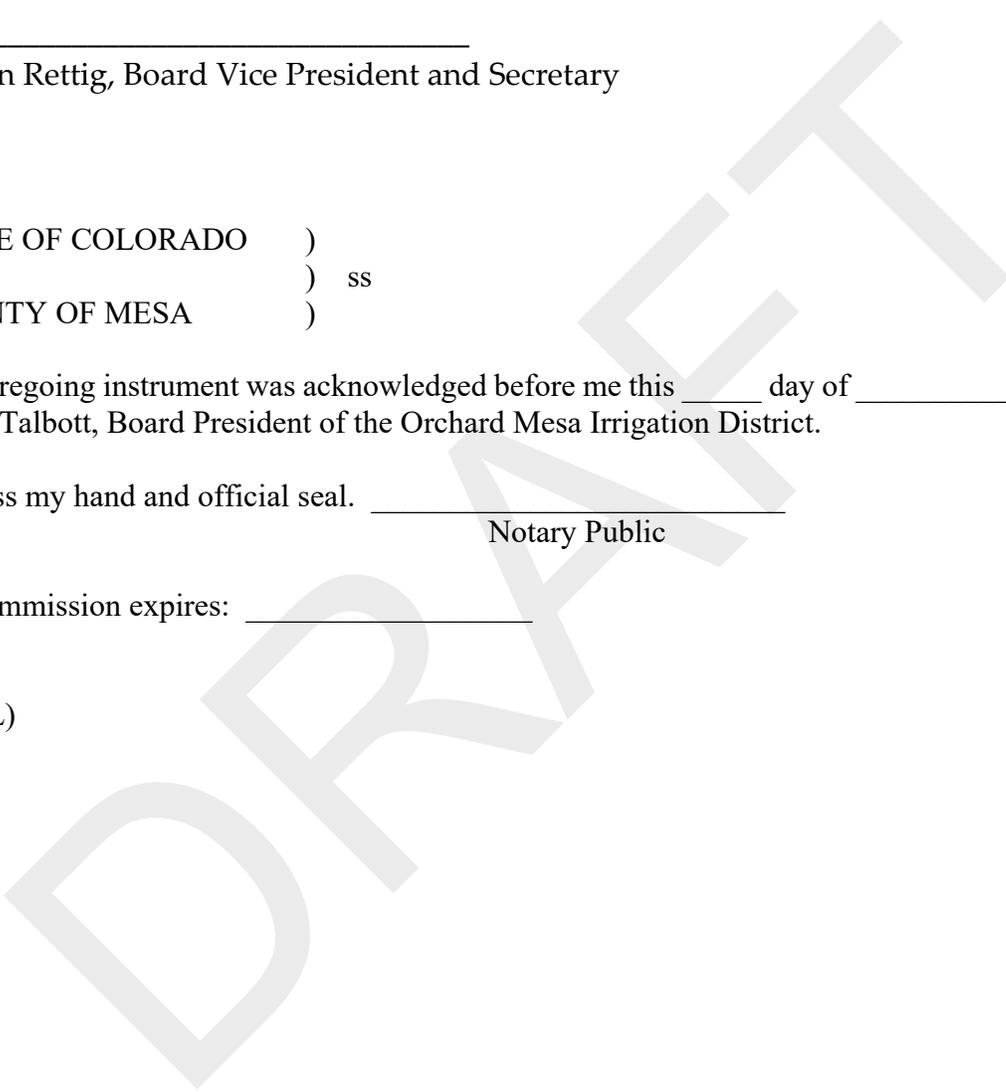
STATE OF COLORADO)
) ss
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by Bruce Talbott, Board President of the Orchard Mesa Irrigation District.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(SEAL)



UTE WATER CONSERVANCY DISTRICT
Acting by and through the
UTE WATER ACTIVITY ENTERPRISE

By: _____
H. Kenneth Henry, Board President

Attest:

By: _____
Gregory L. Green, Board Secretary

STATE OF COLORADO)
) ss
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 11th day of July, 2018, by H. Kenneth Henry, Board President, and Gregory L. Green, Board Secretary, of the Ute Water Conservancy District, acting by and through the Ute Water Activity Enterprise.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(SEAL)

Exhibits

- Exhibit A Decree
- Exhibit B Description of Box Creek Project
- Exhibit C Box Creek Support Letter
- Exhibit D Form of Lease
- Exhibit E Aurora System Storage
- Exhibit F Expression Of Mutual Intent Letter

DRAFT

<p>DISTRICT COURT, WATER DIVISION 2, COLORADO</p> <p>Pueblo Judicial Building 501 North Elizabeth Street Pueblo, Colorado 81003 (719) 404-8832</p> <hr/> <p>CONCERNING THE APPLICATION OF</p> <p>BUSK-IVANHOE, INC., A COLORADO CORPORATION</p> <p>IN ADAMS, ARAPAHOE, CHAFFEE, DOUGLAS, JEFFERSON, LAKE, PARK, PITKIN, AND WELD COUNTIES, COLORADO</p>	<p>Settlement Discussions Pursuant to Rule 408, C.R.E.</p> <p>▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number: 09CW142 Consolidated with: 09CW272, Water Division 1 09CW186, Water Division 5</p>
<p align="center">AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE</p>	

This matter comes before the Water Court upon the application of Busk-Ivanhoe, Inc. ("Busk-Ivanhoe, Inc." or "Applicant") for a decree approving a change of Applicant's undivided one-half interest in the water rights of the Busk-Ivanhoe System. The Water Court having considered the pleadings, the stipulations of the parties, and the evidence presented, and being fully advised in the premises, makes the following Amended Findings of Fact, Conclusions of Law, Judgment and Decree Approving Application for Change of Water Rights ("Decree"):

FINDINGS OF FACT

1. The name, address and telephone number of the Applicant is Busk-Ivanhoe, Inc.; street address: 15151 East Alameda Parkway, Suite 3600, Aurora, Colorado 80012; mailing address: 17850 Road JJ, Rocky Ford, Colorado 81067; telephone number: 303.739.7370.
2. The City of Aurora, Colorado, a municipal corporation of the counties of Adams, Arapahoe and Douglas, acting by and through its Utility Enterprise ("Aurora" or "Aurora Water"), is the sole owner of the capital stock of Busk-Ivanhoe, Inc. Busk-

Ivanhoe, Inc. owns an undivided one-half (1/2) interest in the water rights of the Busk-Ivanhoe System. The Board of Water Works of Pueblo, Colorado ("PBWW") is the owner of the other undivided one-half interest in the Busk-Ivanhoe System water rights. PBWW changed its interest in the Busk-Ivanhoe System water rights in District Court, Water Division 5, Case No. 90CW340 (consolidated with District Court, Water Division 2, Case No. 90CW52), decree entered November 15, 1993. Case No. 90CW340 and PBWW's interest in the Busk-Ivanhoe System and water rights are not the subject of or affected by the Decree entered herein.

3. Busk-Ivanhoe, Inc., initiated this matter by filing this Application for Change of Water Rights (Application") with the Water Clerk on December 30, 2009.
4. Timely and adequate notice of the pendency of this proceeding in rem was given in the manner required by law. The Water Court has jurisdiction over the subject matter of this proceeding and over all who have standing to appear as parties, whether they have appeared or not.
5. Simultaneous with the Application in this case, Busk-Ivanhoe, Inc., filed Applications identical in content with the Water Clerk for the District Court, Water Division 1, Case No. 09CW272, and the Water Clerk for the District Court, Water Division 5, Case No. 09CW186. After the time for filing statements of opposition expired pursuant to C.R.S. § 37-92-302, on March 4, 2010, the Applicant filed its Motion to Consolidate Applications pursuant to C.R.C.P. Rule 42.1. On April 9, 2010 the Panel on Consolidated Multidistrict Litigation in Case No. 10MDL08 entered its Certification to the Chief Justice Pursuant To C.R.C.P. Rule 42.1(h) that determined the cases should be consolidated in Water Division 2. On April 28, 2010 a Petition Pursuant to C.A.R. 21 was filed by the Colorado River Water Conservation District, the Grand Valley Water Users Association, Orchard Mesa Irrigation District, the Ute Water Conservancy District and the Board of County Commissioners of Pitkin County. A Petition Pursuant to C.A.R. 21 was also filed by the Applicant. On May 6 the Colorado Supreme Court in Case No. 2010SA114 denied the Petitions. On May 7, 2010, the Colorado Supreme Court entered its Order Pursuant to C.R.C.P. Rule 42.1.(i) consolidating the cases in the District Court, Water Division 2. On October 27, 2010 the Division 2 Water Court granted Busk-Ivanhoe, Inc.'s "Amendment to Application for Change of Water Rights" in this matter.
6. Timely statements of opposition were filed in Case Nos. 09CW142, 09CW272 and/or 09CW186 as follows:
 - 6.1. Aggregate Industries, WCR
 - 6.2. Arkansas Valley Ditch Association
 - 6.3. Basalt Water Conservancy District
 - 6.4. Peter and Cynthia Baurer
 - 6.5. Board of County Commissioners of Pitkin County

- 6.6. Board of Water Works of Pueblo, Colorado
 - 6.7. Centennial Water and Sanitation District
 - 6.8. City and County of Denver, acting by and through its Board of Water Commissioners
 - 6.9. Colorado River Water Conservation District
 - 6.10. Colorado State Board of Land Commissioners
 - 6.11. Colorado State Engineer and Division Engineers for Water Divisions 1, 2 and 5
 - 6.12. Colorado Water Conservation Board
 - 6.13. Cottonwood Creek Investors, LLC
 - 6.14. Denver Metropolitan Ministries of the United Methodist Church
 - 6.15. Eagle County Board of County Commissioners
 - 6.16. Carl Eiberger
 - 6.17. L. G. Everist, Inc.
 - 6.18. Faith Presbyterian Church
 - 6.19. Farmers Reservoir and Irrigation Company
 - 6.20. First Creek Ranch, LLC
 - 6.21. Front Range Aggregates, LLC
 - 6.22. Furniture Row
 - 6.23. Grand Valley Water Users Association
 - 6.24. High Line Canal Company
 - 6.25. Lower Arkansas Valley Water Conservancy District
 - 6.26. Orchard Mesa Irrigation District
 - 6.27. Sand Creek Ranch, LLC
 - 6.28. Southeastern Colorado Water Conservancy District
 - 6.29. Starfall Ranch, LLC
 - 6.30. Trout Unlimited
 - 6.31. United States of America
 - 6.32. United Water and Sanitation District
 - 6.33. Upper Arkansas Water Conservancy District
 - 6.34. Ute Water Conservancy District, acting by and through the Ute Water Activity Enterprise
 - 6.35. World Vision, Inc.
7. Bank of America filed a Motion to Intervene and Statement of Opposition on May 4, 2010. On June 25, 2010 the Referee entered an Order Granting Motion to Intervene that accepted for filing the Bank of America's Statement of Opposition. By order dated February 3, 2011, Pure Cycle Corporation was substituted for Bank of America Corporation.
 8. The time for filing Statements of Opposition and for seeking leave to intervene has expired.

9. This matter was referred to the Water Referee for Water Division 2 and was re-referred to the Water Court by the Order of Re-referral entered November 1, 2011.
10. As acknowledged by the Minute Order entered March 24, 2010 by the Referee, Water Division 2, because Statements of Opposition were filed by the State and Division Engineers, consultation with the Division Engineer was not held in this matter.
11. Various parties resolved or discontinued their opposition of this matter:
 - 11.1. The following parties withdrew their Statements of Opposition prior to trial:
 - 11.1.1. Cottonwood Creek Investors, LLC by notice filed May 26, 2011
 - 11.1.2. First Creek Ranch, LLC by notice filed May 26, 2011
 - 11.1.3. Sand Creek Ranch, LLC by notice filed May 26, 2011
 - 11.1.4. Starfall Ranch, LLC by notice filed May 26, 2011
 - 11.2. Applicant reached stipulated settlements in this matter with the following parties prior to trial:
 - 11.2.1. Centennial Water and Sanitation District by Stipulation dated July 8, 2010
 - 11.2.2. Carl Eiberger by Stipulation dated February 18, 2011
 - 11.2.3. Upper Arkansas Water Conservancy District by stipulation dated March 31, 2011
 - 11.2.4. L.G. Everist, Inc. by stipulation dated April 25, 2011
 - 11.2.5. United Water and Sanitation District by stipulation dated May 27, 2011
 - 11.2.6. Front Range Aggregate, LLC by stipulation dated June 15, 2011
 - 11.2.7. Aggregate Industries-WCR, Inc. by stipulation dated July 11, 2011
 - 11.2.8. Denver Metropolitan Ministries of the United Methodist Church by stipulation dated August 4, 2011
 - 11.2.9. Faith Presbyterian Church by stipulation dated August 23, 2011
 - 11.2.10. World Vision, Inc. by stipulation dated August 23, 2011
 - 11.2.11. Furniture Row, LLC by stipulation dated August 23, 2011
 - 11.2.12. Colorado State Board of Land Commissioners by stipulation dated September 7, 2011
 - 11.2.13. Farmers Reservoir and Irrigation Company by stipulation dated October 14, 2011
 - 11.2.14. Peter and Cynthia Baurer by stipulation dated November 1, 2011
 - 11.2.15. Southeastern Colorado Water Conservancy District by stipulation dated December 13, 2011, and supplemental stipulation dated October 3, 2012

- 11.2.16. Pure Cycle Corporation by stipulation dated December 15, 2011
- 11.2.17. City and County of Denver, acting by and through its Board of Water Commissioners by stipulation dated March 19, 2012
- 11.2.18. Lower Arkansas Valley Water Conservancy District by stipulation dated March 22, 2012
- 11.2.19. Colorado Water Conservation Board by stipulation dated March 21, 2013
- 11.2.20. United States of America by stipulation dated July 31, 2013

11.3 Applicant reached stipulated settlements in this matter with the following parties after trial:

11.3.1. Colorado River Water Conservation District, Basalt Water Conservancy District, the Board of County Commissioners of Eagle County, the Board of County Commissioners of Pitkin County, Grand Valley Water Users Association, Orchard Mesa Irrigation District, and the Ute Water Conservancy District acting by and through the Ute Water Activity Enterprise, collectively, by stipulation dated _____, 2018.

11.3.2. Colorado State Engineer and Division Engineers for Water Divisions 1, 2 and 5, collectively, by stipulation dated _____, 2018.

12. Procedural History.

- 12.1. Applicant filed a Motion and Brief for Determination of Questions of Law on December 9, 2011. After briefing by several parties and oral argument to the Court, a ruling on said Motion was entered on April 18, 2013 (“April, 2013 Order”).
- 12.2. A five-day trial to the Court was held from July 23 through 26 and 30, 2013. In addition to the Applicant, the Colorado River Water Conservation District, the Basalt Water Conservancy District, the Board of County Commissioners of Eagle County, the Board of County Commissioners of Pitkin County, Grand Valley Water Users Association, Orchard Mesa Irrigation District, the Ute Water Conservancy District acting by and through the Ute Water Activity Enterprise, the High Line Canal Company a/k/a Rocky Ford High Line Canal Company and the State Engineer and Division Engineers for Water Divisions 1, 2 and 5 participated at trial.
- 12.3. The Court entered its *Findings of Fact, Conclusions of Law, and Order* on May 27, 2014 (“May 2014 Order”) and its *Findings of Fact, Conclusions of Law, Judgment and Decree* on August 15, 2014 (“August 2014 Decree”).

- 12.4. On October 1 and 2, 2014, the following parties filed Notices of Appeal in this matter, generating Case No. 14SA303:
 - 12.4.1. The Colorado River Water Conservation District
 - 12.4.2. The Basalt Water Conservancy District
 - 12.4.3. The Board of County Commissioners of Eagle County
 - 12.4.4. The Board of County Commissioners of Pitkin County
 - 12.4.5. Grand Valley Water Users Association
 - 12.4.6. Orchard Mesa Irrigation District
 - 12.4.7. Ute Water Conservancy District acting by and through the Ute Water Activity Enterprise (The parties listed in 12.4.1 – 12.4.7 are referred to herein as the “West Slope Opposers”)
 - 12.4.8. The State Engineer and Division Engineers for Water Divisions 1, 2 and 5 (herein “SEO/DEO Opposers”)
 - 12.5. The Colorado Supreme Court issued its Opinion in Case No. 14SA303 on December 5, 2016, reversing the Court’s May 2014 Order and August 2014 Decree.
 - 12.6. After the Colorado Supreme Court issued its Opinion, West Slope Opposers and the Applicant engaged in extensive wide ranging settlement discussions in order to develop this Amended Findings of Fact, Conclusions of Law, Judgment and Decree.
 - 12.7. The Court has considered, reviewed and approved the stipulation between the West Slope Opposers and Applicant regarding their mutual consent to the entry of this decree.
13. This Amended Findings of Fact, Conclusions of Law, Judgment and Decree is the result of substantial and extensive settlement discussions after a trial, appeal and remand of this matter to the Court. The parties have agreed, and it is hereby found and concluded by the Court, that the acquiescence of the parties to a stipulated decree under the specific factual and legal circumstances of this contested matter and upon the numerous and interrelated compromises reached by the parties shall never give rise to any argument, claim, defense or theory of acquiescence, waiver, bar, merger, stare decisis, res judicata, estoppel, laches, or otherwise, nor to any administrative or judicial practice or precedent, by or against any of the parties hereto in any other matter, case or dispute, nor shall testimony concerning such acquiescence of any party to a stipulated decree herein be allowed in any other matter, case or dispute. The parties have stipulated and agreed that they do not intend these Findings, Conclusions and Decree to have the effect of precedent or preclusion on any factual or legal issue in any other matter.

14. The land and water rights involved herein are not included within the boundaries of any designated ground water basin. The water rights changed herein do not require the construction of any wells. Further, the decree does not authorize, nor does it prevent, the construction of any new wells, the construction of substitute wells or the refurbishment of existing wells.
15. Historically, the water rights of the Busk-Ivanhoe System owned by Applicant and its predecessors in interest have been diverted transmountain from the Colorado River basin through the continental divide and used for irrigation of lands in the Arkansas River basin owned by the shareholders of the High Line Canal Company. The High Line Canal Company sold the Busk-Ivanhoe physical system and one-half of the Busk-Ivanhoe System water rights to PBWW in 1972. Busk-Ivanhoe, Inc., was incorporated in 1984, and succeeded to the one half-interest in the Busk-Ivanhoe System water rights retained by the High Line Canal Company. Aurora purchased 100% of the outstanding shares of Busk-Ivanhoe, Inc. over the period 1986 to 2001. In addition to historical irrigation uses, following acquisition by Aurora of shares of stock in Busk-Ivanhoe Inc., the water has been used within areas served by Aurora's municipal water supply and water reuse systems within the South Platte River basin.
16. The Applicant's one-half interest in the Busk-Ivanhoe System water rights, changed in this proceeding, are described as follows:
 - 16.1. **Busk-Ivanhoe System:** The Busk-Ivanhoe System is comprised of the Ivanhoe Reservoir, an on-channel reservoir on Ivanhoe Creek, that collects water from Ivanhoe Creek, the Lyle Ditch, the Pan Ditch and the Hidden Lake Creek Ditch in the Colorado River Basin on the western slope of Colorado, and the Ivanhoe Tunnel a/k/a Carlton Tunnel, that carries water from the Colorado River basin through the Continental Divide to the Arkansas River basin on the eastern slope of Colorado.
 - 16.2. **Date of Original and All Relevant Subsequent Decrees:**
 - 16.2.1. The Busk-Ivanhoe System water rights (WDID 1104612, UTM X 3731389, UTM Y 4345311), including Ivanhoe Reservoir and Tunnel, Lyle Ditch, Pan Ditch and Hidden Lake Creek Ditch, were originally adjudicated by the District Court, Garfield County, Colorado, Case No. 2621, on January 9, 1928.
 - 16.2.2. The water rights of the Pan Ditch and the Hidden Lake Creek Ditch were made partially absolute by the District Court, Garfield County, Case No. 3082, on August 25, 1936.
 - 16.2.3. The water rights of the Pan Ditch and the Hidden Lake Creek Ditch were further made partially absolute by the District Court, Garfield

County, Cause No. 4033, on October 24, 1952. The amounts stated in subparagraph 16.6, below, are decreed absolute water rights. All remaining conditional water rights for these structures adjudicated on January 9, 1928 have been canceled.

- 16.2.4. PBWW changed its one-half interest in the Busk-Ivanhoe System water rights in District Court, Water Division 5, Case No. 90CW340 (consolidated with District Court, Water Division 2, Case No. 90CW52), decree entered November 15, 1993. PBWW's interest in the water rights of the Busk-Ivanhoe System is not claimed in, is not the subject of, and is not affected by, the Decree entered in this case.

16.3. Legal Descriptions of Structures.

- 16.3.1. Ivanhoe Reservoir. Ivanhoe Reservoir is formed by a dam approximately 21 feet high across the natural bed of Ivanhoe Creek, a tributary of the Fryingpan River, and situated within the SE/4 of the SW/4 of Section 12, T9S, R82W, 6th P.M., Pitkin County, Colorado, with its northeasterly end located at or about a point from which the southeast corner of Section 13, T9S, R82W, 6th P.M., bears south 26°45' east, 7,021.3, feet, which point is also described as a point in the SE/4 of the SW/4 of Section 12, T9S, R82W, 6th P.M. that lies 930 feet from the south line and 2,050 feet from the west line of Section 12, and by a bulkhead dam approximately 10 feet high at the upper end of said reservoir situated in the SE/4 of the NE/4 Section 13, T9S, R82W, 6th P.M., with its southerly end located at or about a point from which the southeast corner of Section 13 bears south 8°11' east, 2,739.2 feet, which point is also described as a point in the SE/4 of the NE/4 of Section 13, T9S, R82W, 6th P.M. that lies 2,680 feet from the south line and 425 feet from the east line of Section 13, and overflows all or portions of the SE/4 of the SW/4 and SW/4 of the SE/4 of Section 12 and the NE/4 of the NW/4 and NE/4 of Section 13, all of T9S, R82W, 6th P.M. The Lyle, Pan and Hidden Lake Creek Ditches, which divert from the points described below, all flow into Ivanhoe Reservoir. (WDID 3803732, UTM X 369871, UTM Y 4348153).

- 16.3.2. Ivanhoe Tunnel. The Ivanhoe Tunnel has its westerly portal at or about a point from which the southeast corner of Section 13, T9S, R82W, 6th P.M., Pitkin County, Colorado, bears south, 8°11' east 2,739.2 feet, which point is also described as a point in the SE/4 of the NE/4 of Section 13, T9S, R82W, 6th P.M. that lies 2,680 feet from the south line and 425 feet from the east line of Section 13, and runs from thence south 54°25' east a distance of approximately 9,400 feet to its easterly portal in the NE/4 of the SW/4 of Section 20, T9S, R81W, 6th

P.M., Lake County, Colorado, which point is also described as a point in the SE/4 of the NW/4 of Section 20, T9S, R81W, 6th P.M. that lies 2,605 feet from the north line and 2,065 feet from the west line of Section 20. The Ivanhoe Tunnel crosses in its course all or parts of the SE/4 of the NE/4 and the NE/4 of the SE/4 of Section 13 in T9S, R82W, 6th P.M., the SW/4 and the SW/4 of the SE/4 of Section 18, the NE/4 of Section 19, and the S/2 of the NW/4 and the N/2 of the SW/4 of Section 20, all in T9S, R81W, 6th P.M. (3804613 UTM X 370644, UTM Y 4347215).

- 16.3.3. Lyle Ditch. The Lyle Ditch diverts from Lyle Creek, a tributary of Ivanhoe Creek, at or about a point on the southeast bank of said stream in the NW/4 of the NE/4 of Section 2, T9S, R82W, 6th P.M., Pitkin County, Colorado, from which the southeast corner of Section 13, T9S, R82W, 6th P.M., bears south 23°19' east, 16,607.2 feet, which point is also described as a point in the SW/4 of the NE/4 of Section 2, T9S, R82W, 6th P.M. that lies 1,155 feet from the north line and 1,470 feet from the east line of Section 2, and runs from said point in a southeasterly direction a distance of about 2 miles to Ivanhoe Reservoir. (WDID 3801761, UTM X 368661, UTM Y 4351244).
- 16.3.4. Pan Ditch. The Pan Ditch diverts from Pan Creek, a tributary of South Fryingpan Creek, at a point on the north bank of said stream in the NW/4 of the NE/4 of Section 24, T9S, R82W, 6th P.M., Pitkin County, Colorado, from which the southeast corner of Section 13, T9S, R82W, 6th P.M., bears north 52°14' east, 2,022.1 feet, which point is also described as a point in the NW/4 of the NE/4 of Section 24, T9S, R82W, 6th P.M. that lies 1,280 feet from the north line and 1,585 feet from the east line of Section 24, and runs from said point in a northwesterly direction a distance of 1.6 miles to Ivanhoe Reservoir. The Pan Ditch decreed location was originally based upon the then current best available survey information, which information was a projection survey. While the location of the point of diversion has not changed, through the use of modern technology a more accurate description of the actual point of diversion is set forth hereinafter. (WDID 3801760, Decreed: UTM X 370340, UTM Y 4346236, GPS Actual: UTM X 370265, UTM Y 4345873).
- 16.3.5. Hidden Lake Creek Ditch. The Hidden Lake Creek Ditch diverts from Hidden Lake Creek, a tributary of Ivanhoe Creek, at a point on the east bank of said stream in the NE/4 of the SW/4 of Section 11, T9S, R82W, 6th P.M. in Pitkin County, Colorado, from which the southeast corner of Section 13, T9S, R82W, 6th P.M., bears south 46°14' east, 11,392.5 feet, which point is also described as a point in the NE/4 of

the SW/4 of Section 11, T9S, R82W, 6th P.M. that lies 2,455 feet from the south line and 2,255 feet from the west line of Section 11, and runs from said point in a southeasterly direction a distance of about 1.1 miles to Ivanhoe Reservoir. (WDID 3801762, UTM X 368425, UTM Y 4348731).

16.4. **Decreed Sources of Water:** Sources of water are Ivanhoe Creek, Hidden Lake Creek, Pan Creek and Lyle Creek, all tributary to the Fryingpan River, tributary to the Colorado River.

16.5. **Appropriation Dates:**

Ivanhoe Reservoir:	June 27, 1921
Ivanhoe Tunnel:	June 27, 1921
Lyle Ditch:	September 28, 1924
Pan Ditch:	October 5, 1924
Hidden Lake Creek Ditch:	August 30, 1927

16.6. **Total Amounts Decreed Absolute to Structures:**

16.6.1. For storage prior to export:

Ivanhoe Reservoir:	1,200 acre-feet, at the following rates:
Ivanhoe Creek:	entire flow of the stream
Lyle Ditch:	200 cfs
Pan Ditch:	25 cfs
Hidden Lake Creek Ditch:	70 cfs

16.6.2. For direct export via Ivanhoe Tunnel:

Ivanhoe Reservoir:	35 cfs
Lyle Ditch:	50 cfs
Pan Ditch:	25 cfs
Hidden Lake Creek Ditch:	70 cfs

16.7. **Decreed Use or Uses.** The Busk-Ivanhoe System Water Rights were originally decreed for the irrigation of lands in the State of Colorado lying along Lake Fork Creek and the Arkansas River and susceptible of irrigation therefrom. The intent of the original appropriator, as reflected by the original decree, was that the Busk-Ivanhoe System Water Rights would provide a supplemental source of supply for up to 80,000 acres of land located between the Town of Granite and the Colorado / Kansas state line.

17. Applicant seeks the following changes of its one-half interest in the Busk-Ivanhoe System water rights:

- 17.1. **Change of Type of Use.** The Applicant Busk-Ivanhoe, Inc., and its shareholder Aurora may use water derived from Applicant's one-half interest in the Busk-Ivanhoe System for all municipal and domestic purposes, including but not limited to fire protection, sanitary, irrigation, commercial, manufacturing, mechanical and industrial use, recreational purposes, creation and maintenance of wetlands, stock watering, fish and wildlife propagation, lawful instream uses, if any, snowmaking, revegetation, storage and maintenance of storage reserves, and for augmentation, exchange and replacement purposes, together with the right to use, reuse, and successively use to extinction the water as foreign, imported water pursuant to C.R.S. § 37-82-106.
- 17.2. **Change of Place of Use.** The water derived from Applicant's one-half interest in the Busk-Ivanhoe System may be used to satisfy Aurora's current and future water delivery obligations by decree or agreement within the Arkansas River basin, and current and future service areas served by its municipal water supply and water reuse systems and any areas within the South Platte River basin area capable of being served by the Aurora municipal water supply, including areas served by its connections with other systems, for any current or future water supply contracts or obligations of Aurora. Currently, Aurora is located in Township 3 South, Ranges 64, 65, 66 and 67 West, 6th P.M. in Adams County; Townships 4 and 5 South, Ranges 65, 66 and 67 West, 6th P.M. in Arapahoe County; and Township 6 South, Ranges 65 and 66 West, 6th P.M. in Douglas County. Aurora's service area has changed from time to time and will continue to do so.
- 17.3. **Places of Storage in the Arkansas River Basin.** To the extent transmountain diversions of Busk-Ivanhoe System water rights are stored in the Arkansas River basin, storage shall be without limitation as to location, except as limited by Paragraph 17.5, but shall include the following reservoirs:
- 17.3.1. Turquoise Reservoir. Turquoise Reservoir, including the proposed Turquoise Lake Enlargement, is located in all or portions of Sections 7, 8, 17, 18, 19 and 20, T9S, R80W, and Sections 10, 11, 12, 13, 14 and 15, T9S, R81W, all from the 6th P.M., in Lake County, Colorado. The Turquoise Reservoir Dam axis and the centerline of Lake Fork Creek intersect at a point whence the northwest corner of Section 16, T9S, R80W, 6th P.M., bears north 44°46'18" east of a distance of 10,344.35 feet, which point is also described as a point in the SW/4 of the NE/4 of Section 19, T9S, R80W, 6th P.M. that lies 2,110 feet from the north line and 1,890 feet from the east line of Section 19, all as more particularly

described in the decree in Civil Action No. 5141, District Court, Chaffee County, Colorado (WDID 1103500, UTM X 381548, UTM Y 4345718).

- 17.3.2. Twin Lakes Reservoir. Twin Lakes Reservoir is located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in T11S, R80W, 6th P.M., Lake County, Colorado. Twin Lakes Dam axis and the center line of Lake Creek intersect at a point whence the southeast corner of Section 23, T11S, R80W, 6th P.M. bears south 54°13'8" east, a distance of 3,803.10 feet, which point is also described as a point in the NE/4 of the SW/4 of Section 23, T11S, R80W, 6th P.M. that lies 2,160 feet from the south line and 2,325 feet from the west line of Section 23, or as more particularly described in the decree in Civil Action No. 5141, District Court, Chaffee County, Colorado (WDID 1103503, UTM X 387247, UTM Y 4326098).
- 17.3.3. Box Creek Reservoir. Box Creek Reservoir is to be located in all or portions of Sections 32 and 33, T10S, R80W, and Sections 4 and 5, T11S, R80W, all from the 6th P.M., in Lake County, Colorado. The exact location of Box Creek Reservoir Dam is not yet established. The Box Creek dam axis may intersect the approximate centerline of the Box Creek valley at a point approximately 2,000 feet west and 300 feet south of the northeast corner of Section 4, T11S, R80W, 6th P.M. The Arkansas River Intake to Box Creek Reservoir is to be located in Sections 22, 27 and 34, T10S, R80W; and Section 3, T11S, R80W, 6th P.M., in Lake County, Colorado (WDID 1103545, UTM X 384353, UTM Y 4331827).
- 17.3.4. Clear Creek Reservoir. Clear Creek Reservoir is located on Clear Creek in Sections 7 and 8, T12S, R79W, and Section 12, T12S, R80W, all of the 6th P.M. in Chaffee County, Colorado (WDID 1103504, UTM X 392180, UTM Y 4319897).
- 17.4. **Places of Storage in the South Platte River Basin.** To the extent transmountain diversions of Busk-Ivanhoe System water rights are stored in the South Platte River basin, storage shall be without limitation as to location, except as limited by Paragraph 17.5, but shall include the following reservoirs:
- 17.4.1. Spinney Mountain Reservoir. Spinney Mountain Reservoir is constructed on the South Platte River, with the dam forming the reservoir located in the S/2 of Section 25, T12S, R74W, 6th P.M. in Park County, Colorado, with the left abutment of the dam located at a point whence the southwest corner of Section 36, T12S, R74W, 6th P.M. bears south 23°26' west, 8,314.3 feet, which point is also described as a point in the

NW/4 of the SE/4 of Section 25, T12S, R74W, 6th P.M. that lies 2,300 feet from the south line and 2,590 feet from the east line of Section 25. Water is stored in Spinney Mountain Reservoir in all or parts of Sections 14, 15, 21, 22, 23, 25, 26, 27, 35 and 36, T12S, R74W, 6th P.M. (WDID 2304013, UTM X 444400, UTM Y 4315300).

- 17.4.2. Strontia Springs Dam and Reservoir Complex. Strontia Springs Dam is constructed on the South Platte River in Douglas County, with the east-end of dam (right) abutment located at a point from whence the northwest corner of Section 21, T7S, R69W, 6th P.M. bears north 52° west a distance of 1,300 feet, which point is also described as a point in the NW/4 of the NW/4 of Section 21, T7S, R69W, 6th P.M. that lies 845 feet from the north line and 995 feet from the west line of Section 21. The right abutment is at approximate latitude 39°25'56" north, longitude 105°07'31" west. Water is stored in Strontia Springs Reservoir in all or parts of Sections 20, 21, 29 and 30, T7S, R69W, 6th P.M. (WDIW 0803983, UTM X 488500, UTM Y 4364150).
- 17.4.3. Aurora Rampart Reservoir. Rampart Reservoir is an off-channel reservoir located in the SW/4 of the SW/4, SE/4 of the SW/4, and SW/4 of the SE/4 of Section 12, and the NW/4 of the NE/4, NE/4 of the NW/4, and NW/4 of the NW/4 of Section 13, T7S, R69W, 6th P.M., Douglas County, Colorado. The approximate (right) abutment is latitude 39°26'57" north and longitude 105°03'41" west, which point is also described as a point in the SW/4 of the SE/4 of Section 12, T7S, R69W, 6th P.M. that lies 40 feet from the south line and 1,915 feet from the east line of Section 12. (WDID 0803504, UTM X 494400, UTM Y 4366800).
- 17.4.4. Quincy Reservoir. Quincy Reservoir is an off-channel reservoir located in the NE/4, E/2 of the NW/4, and N/2 of the SE/4 of Section 9, and the S/2 of the NW/4, N/2 of the SW/4 of Section 10, T5S, R66W, 6th P.M., in Arapahoe County, Colorado. The approximate (right) abutment is latitude 39°38'15" north, and longitude 104°46'36" west, which point is also described as a point in the NE/4 of the NE/4 of Section 9, T5S, R66W, 6th P.M. that lies 370 feet from the north line and 1,145 feet from the east line of Section 9. (WDID 0203375, UTM X 519000, UTM Y 4387300)
- 17.4.5. Aurora Reservoir. The Aurora Reservoir is an off-channel reservoir located upon Senac Creek, an intermittent stream, in Sections 15, 16, 20, 21 and 22, T5S, R65W, 6th P.M., Arapahoe County, Colorado. The east-end of the dam (right) abutment is located at a point from whence the northwest corner of Section 15, T5S, R65W, 6th P.M. bears north 45° west a distance of 2,970 feet, which point is also described as a

point in the SE/4 of the NW/4 of Section 15, T5S, R65W, 6th P.M. that lies 2,110 feet from the north line and 2,105 feet from the west line of Section 15. The approximate (right) abutment is latitude 39°37'06" north, and longitude 104°39'11" west. (WDID 0203379, UTM X 529000, UTM Y 4385000).

- 17.4.6. East Reservoir Complex. The East Reservoir will be located in one or more of the following off-channel locations (WDID 0203380):

Site 1:

Site 1A: In Sections 14 and 23 and the N/2 of Section 26, T4S, R65W, 6th P.M. in Arapahoe County, Colorado.

Site 1B: In Sections 9, 10 and 15 and S/2 of Sections 3 and 4 and N/2 of Section 16, T4S, R65W, 6th P.M. in Arapahoe County, Colorado.

Site 2:

Site 2B: In Section 26 and 27 and N/2 of Sections 34, 35 and 36, T4S, R65W, 6th P.M., in Arapahoe County, Colorado.

- 17.4.7. Aquifer Recharge and Recovery Facility B ("ARR-B") and Aurora Tucson South-South Platte Storage Facility Subunits ("Tucson South"). ARR-B and Tucson South will occupy all or portions of the N/2 of the SE/4, the SW/4 of the SE/4, and the SW/4, all in Section 1, T1S, R67W, 6th P.M., in Adams County, Colorado. (WDID 0200511 and WDID 0200512).

- 17.4.8. Challenger Gravel Pit Reservoir. The Challenger Gravel Pit Reservoir will occupy a portion of the NW/4 of Section 1, T1S, R67W, 6th P.M., in Adams County Colorado. (WDID 0203930, UTM X 513700, UTM Y 4427500)

- 17.4.9. Kirby-Dersham Gravel Pit Reservoir. The Kirby-Dersham Gravel Pit Reservoir will occupy portions of the NW/4 of the SE/4, the SW/4 of the SE/4, and the NE/4 of the SE/4, of Section 36, T1N, R67W, 6th P.M., in Weld County, Colorado. (WDID 0203386, UTM X 513900, UTM Y 4428200).

- 17.4.10. Robert W. Walker Reservoir ("Walker South"). Walker South is located in the E/2 of Section 36, T1N, R67W of the 6th P.M., and the W/2 of Section 31, T1N, R66W, 6th P.M. in Weld County, Colorado. (WDID 0203358, UTM X 514300, UTM Y 4428000)

17.4.11. Stillwater Ranch Reservoir ("Walker North"). Walker North is located in the E/2 of Section 36, T1N, R67W of the 6th P.M., and the W/2 of Section 31, T1N, R66W, 6th P.M. in Weld County, Colorado. (WDID 0203358, UTM X 514300, UTM Y 4428000)

17.4.12. Aquifer Recharge and Recovery Facility A ("ARR-A"). ARR-A will occupy all or portions of the S/2 and NW/4 of the SE/4, and the SW/4, all in Section 13, and the N/2 of the NW/4 of Section 24, T1N, R67W, 6th P.M., in Weld County, Colorado. (WDID 0203042, UTM X 513750, UTM Y 4433000).

17.4.13. Fort Lupton Reservoir Complex No. 1. Fort Lupton Reservoir Complex No. 1 is a group of interconnected gravel pits that will occupy Lot 3 of the NW/4 of Section 25, T2N, R67W, 6th P.M., and portions of the NW/4 and the SW/4 of the NE/4, Section 30, T2N, R66W, 6th P.M., in Weld County, Colorado. (WDID 0203504).

17.5. **Additional Places of Storage.** Pursuant to this change of water rights the Applicant and Aurora, as its sole shareholder, have the right to recapture and store water diverted under Applicant's one-half interest in the Busk-Ivanhoe System water rights at additional facilities or locations in Water Division 2 and Water Division 1 to the extent Applicant or Aurora, as its sole shareholder, has the right to use such facilities or locations, and can demonstrate dominion over the water to be recaptured. Prior to storage of water at locations in Divisions 1 and 2 other than those identified herein, Applicant or Aurora shall provide written notice to the State Engineer and the Division Engineer of the applicable Water Division of its right and its intent to do so. The same notice will be provided concurrently to the opposing parties herein who have so requested in their stipulations with Applicant.

18. Historical Diversions and Use.

18.1. Historical diversions and use of water derived from the Busk-Ivanhoe System water rights were analyzed at trial for the period from 1928 through 1986.

18.2. In general, the Rocky Ford High Line was a water-short irrigation system, i.e., the amount of water available was insufficient to meet irrigation demands a material amount of the time.

18.3. The component structures of the Busk-Ivanhoe System are located at a high elevation and consequently collect run-off from a limited area. Typically by mid-summer, most of the snow has melted and little water remains available

for diversion by these structures. As a result, absent enlargement of the structure capacities, there is limited opportunity to increase the yield of these water rights.

- 18.4. The water delivered by the Busk-Ivanhoe System to the Arkansas River and South Platte River basins is imported water that may be used, reused and successively used to extinction. Because appropriators in the basin of importation acquire no vested rights in the return flows from imported water, it was not necessary to determine how much of the water historically applied to beneficial use was actually consumed, nor the timing, amount and location of return flows accruing to the Arkansas River.
- 18.5. Applicant has entered into a stipulation with the West Slope Opposers, by which the Applicant and West Slope Opposers agree to entry of this decree.
19. Terms and Conditions. Pursuant to C.R.S. §37-92-305(3)(a) “A change of water right...shall be approved if such change...will not injuriously affect the owner of or persons entitled to use water under a vested water right or a decreed conditional water right...the water judge shall afford the applicant or any person opposed to the application an opportunity to propose terms and conditions that would prevent such injurious effect.” Applicant previously stipulated with the parties listed in paragraph 11.2. This Decree is no less restrictive upon the Applicant or Aurora than agreed to in said stipulations. As a matter of mutual accommodation and compromise, Applicant, and the West Slope Opposers have stipulated to the entry of this Decree and agree that this Decree, including the following specific terms and conditions prevents injury and that the change of Applicant's one-half interest in the Busk-Ivanhoe System water rights described in paragraph 16 shall be administered in priority with respect to other water rights in Water Division 5 and in accordance with the following terms and conditions (referred to hereafter as the “Terms and Conditions”):
- 19.1. **Noncompliance and Administration.** If the Applicant fails or is unable to fulfill its obligations under the provisions of the IGA identified in the Stipulation entered into between the Applicant and the West Slope Opposers dated ____, 2018, and approved as an Order of this Court, except for failures described in paragraphs 8, 22 and 23 of said IGA, Applicant's diversions under its Busk-Ivanhoe System Water Rights decreed herein shall cease until such time as the Applicant is again in compliance with such Stipulation. The West Slope Opposers shall provide written notice of any noncompliance by filing a motion with this Court. Such motion shall be filed under the caption and case number of this case and shall be served on counsel of record for all parties. Any motion to invoke the Court's jurisdiction pursuant to this paragraph 19.1 shall set forth with particularity

the alleged noncompliance. The moving party shall have the initial burden of going forward to establish noncompliance with the Stipulation but the Applicant shall have the ultimate burden of proof to show compliance with the Stipulation. All the terms and conditions necessary for the State and Division Engineers' administration of the change of water rights approved by this Decree are set forth in the Decree, subject to any modification made by the Court under its retained jurisdiction under paragraph 38 of this Decree.

- 19.2. **Season of Diversion.** Direct flow diversions and diversions for storage will be allowed only within the historical season of diversion beginning March 24 and ending November 25.
- 19.3. **Volumetric Limitations.**
- 19.3.1. Annual Maximum Volumetric Limitation. Diversion by Applicant of its one-half interest in the Busk-Ivanhoe System water rights in any one year will not exceed the historical maximum amount of 4,064 acre-feet.
- 19.3.2. 60 Year Volumetric Limitation. Effective 20 years after entry of this Decree, Applicant will limit diversions of its one-half interest in the Busk-Ivanhoe System water rights for each 60 year period (consisting of a preceding 59 year period and the current year) such that the total diversion during the 60 year period will not exceed 144,960 acre-feet (i.e., an average of 2,416 acre feet per year on a 60 year rolling average basis).
- 19.3.3. 20 Year Volumetric Limitation. Commencing at the time this Decree is entered, Applicant shall limit diversions of its one-half interest in the Busk-Ivanhoe System water rights during any 20 year period such that the total diversion during the 20 year period will not exceed 63,840 acre-feet (i.e., an average of 3,192 acre feet per year on a 20 year rolling average basis).
- 19.3.4. Initial Application of Volumetric Limitations. For purposes of administering the volumetric limits set forth above, the diversion of Applicant's one-half interest in the Busk-Ivanhoe System water rights for the 39 years prior to the entry of this Decree shall be 2,416 acre feet each year.
- 19.4. **Alternate Time of Use.** Seasonal limitations on the diversions are described above in paragraph 19.2. Water diverted in compliance with those limits may be stored for subsequent use.

- 19.5. **Transit Loss.** Applicant shall bear such stream losses as may be lawfully assessed by the Division Engineers for Water Divisions 1 and 2 or their representatives for use of the public streams for carriage of water derived from Applicant's one-half interest in the Busk-Ivanhoe System water rights.
- 19.6. **Accounting.** Applicant shall provide accounting and reporting to the Division Engineers for Water Divisions No. 2 and 5 on a monthly basis, or more frequently as required by the Division Engineers for the proper administration of this change of water rights, and shall provide the same to any opposing party herein upon request. At a minimum, such accounting will provide:
- 19.6.1. Daily flow measurements of transmountain diversions during the March 24 through November 25 period and allocation of that flow to the Applicant (and to PBWW as required under administration of the decree in Case No. 90CW340).
- 19.6.2. Status of Applicant's cumulative diversions in relation to the volumetric limitations described in paragraphs 19.3.1 through 19.3.4, above.
- 19.6.3. Storage and use accounting (including transit loss) of Applicant's Busk-Ivanhoe System transmountain diversions.
- 19.7. **Measuring Devices.** Applicant (along with PBWW or their successors) shall maintain existing measuring and recording devices in operating condition, and install and maintain such other measuring and recording devices as are reasonably determined by the Division Engineer to be necessary for the proper administration and operation of the change water rights.
- 19.8. **Use of Lands, Facilities and Structures.** Nothing herein shall be construed to create any right on the part of Applicant or Aurora, as its sole shareholder, to utilize lands, facilities or structures owned by third parties for the diversion, carriage or storage of water of the Busk-Ivanhoe System changed herein. The entry of this Decree shall neither enlarge nor diminish any right to use lands, facilities or structures currently owned or possessed by Aurora. Aurora may utilize land for the construction and operation of facilities and structures only to the extent Aurora has acquired the right to so use such land from the appropriate persons or entities, by purchase, by exercise of the power of eminent domain or by other appropriate means. In the event that Aurora seeks to deliver water past dry-up points or structures that may be diverting the entire flow of the stream such that the delivery requires the installation of a bypass structure or the use of an existing bypass structure, Aurora is responsible for either installing such a structure,

modifying an existing structure or securing any agreement required to use an existing structure, any of which may include installing a continuous recording measuring device approved by the appropriate Water Commissioner. In the event the use of a bypass structure is required, Aurora shall inform the appropriate Division Engineer of such installation, modification, or agreement. The following limitations apply to Aurora's rights to use certain lands, facilities or structures referenced herein:

19.8.1. Turquoise and Twin Lakes Reservoirs. Applicant and Aurora, as its sole shareholder, recognize that Turquoise Reservoir and Twin Lakes Reservoir are owned by the United States Bureau of Reclamation and operated, in part, as part of the Fryingpan-Arkansas Project. Any use of the Fryingpan-Arkansas Project facilities by Aurora will occur only with the written consent of the owners of said reservoirs, and will be made consistent with such policies, procedures, contracts, charges and terms as may be lawfully determined by the Bureau of Reclamation or its successors in interest in their good faith discretion.

19.8.1.1. Aurora, as the sole shareholder of Applicant, may use these facilities to store the subject Busk-Ivanhoe Inc. water based on the following:

19.8.1.1.1. Turquoise Reservoir: That certain "Water Rights Purchase and Sales Agreement" between Colorado and Utah Land Company and Aurora dated December 12, 1983 and recorded at Page 467, Book 250, et seq., of the Lake County Clerk and Recorder's Office and that certain deed captioned "Conveyance of Water Storage Right" from Colorado and Utah Land Company to Aurora, dated December 27, 1983 and recorded at Book 467, Page 302, et seq., of the Lake County Clerk and Recorder's Office. Such agreement and deed transferred to Aurora 5,000 acre-feet of storage space in Turquoise Reservoir from the 10,000 acre-feet of storage space owned by the seller pursuant to United States Department of Interior, Bureau of Reclamation Contract No. 6-07-70-W0089.

19.8.1.1.2. Twin Lakes Reservoir: Aurora is the owner of 2,488.475 shares of Twin Lakes Reservoir and Canal Company, which company, through agreements with the United States Bureau of Reclamation may store water, including water rights owned by its shareholders, in Twin Lakes Reservoir. Such agreements include: Bureau of Reclamation Contract No. 7-07-70L0056 between the United States and The Twin

Lakes Reservoir and Canal Company, dated January 19, 1997 and amended on June 14, 1977; and any subsequent agreements that may be obtained with the Bureau of Reclamation. Aurora will promptly provide copies of any such subsequent agreements or any amendments to existing agreements to the Division Engineer for Water Division 2. Aurora operations in Twin Lakes Reservoir will be pursuant to Twin Lakes Reservoir and Canal Company By-laws.

- 19.8.1.2. This Decree does not give Busk-Ivanhoe, Inc., or Aurora, as sole shareholder of Applicant, any rights to ownership or use of any Fryingpan-Arkansas Project structures, or any rights of ownership or rights to purchase or receive allocation of Fryingpan-Arkansas Project water or return flows from Fryingpan-Arkansas Project water, and does not alter any existing rights (including any right to renew existing contracts) Busk-Ivanhoe, Inc., or Aurora may otherwise have. Moreover, Busk-Ivanhoe, Inc., and Aurora shall not operate the rights decreed herein in a manner that would interfere with the lawful operation of the Fryingpan-Arkansas Project. This Decree (or any omission herefrom) shall not be interpreted to limit or diminish any existing decreed absolute or conditional water rights of any party including the United States, Bureau of Reclamation and Southeastern Colorado Water Conservancy District.
- 19.8.1.3. Entry of the Decree in this matter has no effect on the authority of the United States to regulate and/or deny use of federal facilities of the Bureau of Reclamation. Aurora, as sole shareholder of Applicant, recognizes that the consideration of and action on requests for any necessary federal contracts and authorizations shall be carried out pursuant to all pertinent statutes, regulations and policies applicable to the occupancy and use of Bureau of Reclamation facilities, including, but not limited to General Reclamation Law, Fryingpan-Arkansas Project authorization legislation, the National Environmental Policy Act and the Endangered Species Act.
- 19.8.1.4. Aurora, as sole shareholder of Applicant, agrees that the entry of this Decree shall not in any way limit or affect the authority of the Bureau of Reclamation with respect to the agency's consideration of and action on such requests for contracts, approvals or authorizations. Aurora recognizes that the authority of the Bureau of Reclamation to impose terms and conditions, and/or deny such

requested contracts, approvals or authorizations, is not in any way limited, affected or enhanced by entry of this Decree or by agreements between Aurora and others to which the United States is not a party.

19.8.1.5. Excepting rights that it presently has, or any renewals of such present rights, Aurora, as sole shareholder of Applicant, acknowledges that it cannot use Fryingpan-Arkansas Project facilities as contemplated under this Decree until and unless it applies for and obtains any approval of the Bureau of Reclamation necessary to allow it to store water in or utilize those facilities and satisfies the terms and conditions imposed by such approvals and/or authorizations.

19.8.2. Pursuant to agreements between Denver Water and Aurora, dated October 10, 1979 and October 11, 1983, Aurora, as sole shareholder of Applicant, is entitled to use the Strontia Springs Dam and Reservoir Complex.

19.9. Specific Terms and Conditions Pursuant to Stipulation with Opposer Centennial Water and Sanitation District ("Centennial"):

19.9.1. Within the boundaries of Water Division 1, Aurora Water shall not divert the water rights subject of this matter (Subject Water Rights) by a well (including an infiltration gallery or other type of groundwater diversion structure) unless the water court has approved a plan for augmentation and/or exchange that authorizes the well diversions. In any application where Aurora Water seeks approval of a plan for augmentation and/or exchange using the Subject Water Rights as a source of augmentation supply or as a substituted supply, Aurora Water may rely upon the re-quantification of the Subject Water Rights and the associated terms and conditions imposed in this matter by the water court to limit Aurora Water's future use of the Subject Water Rights to the re-quantified amounts. While Centennial may litigate any issue concerning the plan for augmentation or exchange, Centennial may not re-litigate issues concerning the re-quantification of the Subject Water Rights and the associated terms and conditions imposed in this matter by the water court to limit Aurora Water's future use of the Subject Water Rights to the re-quantified amounts.

19.9.2. Within the boundaries of Water Division 1, Aurora Water shall not divert the Subject Water Rights into a water recharge facility unless the water court has approved a recharge plan using the Subject Water Rights. In any application where Aurora Water seeks approval of a recharge plan

using the Subject Water Rights, Aurora Water may rely upon the re-quantification of the Subject Water Rights and the associated terms and conditions imposed in this matter by the water court to limit Aurora Water's future use of the Subject Water Rights to the re-quantified amounts. While Centennial may litigate any issue concerning the recharge plan, Centennial may not re-litigate issues concerning the re-quantification of the Subject Water Rights and the associated terms and conditions imposed in this matter by the water court to limit Aurora Water's future use of the Subject Water Rights to the re-quantified amounts.

- 19.9.3. Within the boundaries of Water Division 1, Aurora Water shall not divert or dispose of, or otherwise use or reuse lawn irrigation return flows or other non-sewered return flows derived from the Subject Water Rights unless the water court has entered a decree that quantifies the lawn irrigation return flows or other non-sewered return flows and establishes terms and conditions for the use and reuse of the lawn irrigation return flows or other non-sewered return flows. In any application where Aurora Water seeks quantification of its lawn irrigation return flows or other non-sewered return flows resulting from the use of the Subject Water Rights, Aurora Water may rely upon the re-quantification of the Subject Water Rights and the associated terms and conditions imposed in this matter by the water court to limit Aurora Water's future use of the Subject Water Rights to the re-quantified amounts. While nothing herein limits Centennial's ability to participate in any Aurora lawn irrigation return flow quantification case, but while Centennial may litigate any issue concerning the quantification of Aurora Water's lawn irrigation return flows or other non-sewered return flows, Centennial may not re-litigate issues concerning the re-quantification of the Subject Water Rights and the associated terms and conditions imposed in this matter (WD-2, 09CW142) by the water court to limit Aurora Water's future use of the Subject Water Rights to the re-quantified amounts.
- 19.9.4. Water derived from the Subject Water Rights that is carried in the South Platte River or its tributaries shall be subject to transportation losses assessed by State water administration officials from the point of introduction of such water into the South Platte River or its tributaries to the point of diversion of such water at or into one or more of Aurora Water's facilities.
- 19.9.5. In the event that Aurora Water seeks to deliver water past structures that may be diverting from the stream such that the delivery requires the installation of a bypass structure or the use of an existing bypass structure, Aurora Water is responsible for either installing such a

structure, modifying an existing structure or securing any agreement required to use an existing structure, any of which may include installing a continuous recording measuring device approved by the appropriate Water Commissioner. In the event the use of a bypass structure is required, Aurora Water shall inform the appropriate Division Engineer of such installation, modification or agreement.

- 19.10. No exchange appropriation was sought in this matter and no exchange appropriation is confirmed by this decree. To the extent an exchange is necessary to store or re-divert water in accordance with this decree, such exchange shall operate pursuant to C.R.S. § 37-80-120 or by applicable decree only when such exchange is not subject to administration to satisfy a call placed by an intervening decreed instream flow water right.
20. The water delivered to Ivanhoe Reservoir under the various changed Busk-Ivanhoe System water rights described in paragraph 16 may be exported to the Arkansas River Basin either through the Ivanhoe (a.k.a. Carlton) Tunnel, through another tunnel (with no greater carrying capacity than the decreed capacity of the Ivanhoe (a.k.a. Carlton) Tunnel) and constructed 200 feet or less therefrom to replace the Ivanhoe (a.k.a. Carlton) Tunnel, or through excess capacity in the Nast and Boustead Tunnels owned by the United States and operated as part of the Fryingpan-Arkansas Project. Applicant or Aurora must obtain the right by contract to make any such use of the Nast and Boustead Tunnels, and such use must be in accordance with the terms of such contract and the applicable portions of Paragraph 19. and its sub-paragraphs, above. Moreover, absent a further change of the Busk-Ivanhoe System water rights, the Busk-Ivanhoe water exported through the Nast and Boustead Tunnels must first be stored in and released from Ivanhoe Reservoir, and appropriate deductions must be made for transit losses, if any.
21. Non-Speculation. Aurora, as the sole shareholder of Applicant Busk-Ivanhoe, Inc., has the ability to put the water attributable to its one-half interest in the Busk-Ivanhoe Water System to the types of use and places of use described in paragraph 17, above. Because of Aurora's need for water and the seasonal and volumetric limitations on diversions set forth in paragraph 19, above, and the Terms and Conditions of this Decree the amount of water diverted pursuant to the changed Busk-Ivanhoe System Water rights will not be affected by the locations, or the number of locations, where the water may be stored in Water Division 2 or Water Division 1. Aurora owns or has established rights to use nearly all of the places of storage identified in paragraphs 17.3 and 17.4, above, and there is a reasonable probability Aurora will acquire, as required by Paragraph 17.5, the right to use any lands, facilities or structures identified in paragraph 17.3 and 17.4 for which Aurora does not have a present right or ownership interest.

CONCLUSIONS OF LAW

22. The foregoing Findings of Fact are incorporated into these Conclusions of Law to the extent they constitute conclusions of law.
23. Full and adequate notice of the claims adjudicated herein has been given in the manner required by law.
24. This Court has jurisdiction over the subject matter of this case, to enter the decree requested, and over all persons affected thereby, whether they appeared or not. This is a "water matter" as described in C.R.S. §§ 37-92-101, et seq.
25. With regard to appropriators of water from the Colorado River and its tributaries, use by the Applicant is 100% consumptive. *Twin Lakes Reservoir and Canal Co. v. City of Aspen*, 568 P.2d 45, 50 (Colo. 1977).
26. The Court's conclusions of law on the issues of whether preclusion resulted from the prior change of the Busk-Ivanhoe System water rights in Case No. 90CW340, and the consequent need for an analysis in this case of the historical beneficial use of those rights, are set forth in the Court's ruling on the Motion for Determination of Questions of Law in the April, 2013 Order.
27. Applicable conclusions of law regarding the appropriate representative study period and the historical storage of Busk-Ivanhoe water after importation to the east slope are contained in the Supreme Court's opinion in *In Re: Busk-Ivanhoe Inc.*, 2016 CO 75.
28. Water exported from the Colorado River basin may be used, reused, successively used, used to extinction or otherwise disposed of in the Arkansas River or South Platte River basins into which the water is imported. C.R.S. § 37-82-106(1); *City & County of Denver v. Fulton Irrigating Ditch Co.*, 179 Colo. 47, 506 P.2d 144, 146-147 (1972).
29. Appropriators of water from the Arkansas River and its tributaries have no vested rights to a continuance of importation of foreign water from the Colorado River Basin or return flows therefrom. Such appropriators are not slated for protection in a change of water rights proceeding. *City of Thornton v. Bijou Irrigation Co.*, 926 P.2d 1, 72 (Colo. 1996).
30. The Terms and Conditions set forth in the Findings of Fact are sufficient to prevent injury to the vested water rights of other appropriators from the change of water rights approved herein.

31. The Terms and Conditions of this Decree satisfy all required standards and burdens of proof necessary to adjudicate the requested change of water rights and Applicant is therefore entitled to a decree confirming and approving the changes of water rights decreed herein.
32. An applicant for a change of water rights must show a legally vested interest in the land to be served and a specific plan to use the water. The "vested interest" requirement can be satisfied by a showing that the appropriator of record for purposes of the change decree is a governmental agency, or a person who will use the changed water for his or her own lands or business or has an agreement to provide water to a public entity and/or private lands or business to be served by the changed water right. *High Plains A & M v. Southeastern Colorado Water Cons. Dist.*, 120 P.3d 710, 720 (Colo. 2005).
33. Aurora, as the sole shareholder of Applicant Busk-Ivanhoe Inc., owns and operates an extensive unified system for collecting, treating, distributing and using water, and for the treatment and reuse, successive use or disposition of return flows from such use. Applicant's one-half interest in the water rights of the Busk-Ivanhoe System is a component of Aurora's unified system.
34. The stipulations entered in this case are approved and shall bind and benefit the parties to the stipulations. Except as expressly provided in this Decree, the parties in this case, other than the signatories to these stipulations are neither bound by, nor do they benefit from, these stipulations.

JUDGMENT AND DECREE

35. The foregoing Findings of Fact and Conclusions of Law are incorporated as part of this Judgment and Decree.
36. Applicant's request for a change of water rights is hereby approved, confirmed and adjudicated, as set forth in the Findings of Fact above, including and subject to the terms and conditions stated therein.
37. As more fully explained in the May 2014 Order, any findings in this decree as to diversions, consumptive use and return flows attributable to use of any water through or under the High Line Canal (including by way of example and not by way of limitation water originating from the Busk-Ivanhoe system and native or Arkansas River Basin water), are for purposes of this case only, and are not precedent, and may not be relied on in any future proceedings involving the High Line Canal's native or Arkansas River Basin water rights. In addition, paragraphs 92 through 95 of the Court's May 27, 2014 Trial Order were not implicated or affected by the Supreme Court's Opinion and remain valid and effective.

38. Pursuant to the provisions of C.R.S. § 37-92-304(6), the Court retains jurisdiction over the change of water rights approved herein for reconsideration of the question of injury to the vested water rights of others resulting from the changes approved herein for a period of fifteen (15) years. In the event that any party desire to invoke the Court's retained jurisdiction, such party shall file a Petition which sets forth with particularity the factual and legal basis upon which the requested reconsideration is based. A copy of the Petition shall be served upon all parties to this case. The party seeking to invoke reconsideration of the injury question under retained jurisdiction shall have the initial burden of establishing that injury to their water rights has or may occur from placing the change of water right decreed herein into operation. Upon such a showing, the burden of showing non-injury shall shift to the Applicant. The Water Judge may require additional or modified protective conditions to prevent injury upon determination that such injury exists. If no such Petition is lodged within the fifteen-year period, and if the retained jurisdiction period is not extended by the Court in accordance with the statute, this decree shall become final under its own terms.
39. There being no just reason for delay, the Water Court directs that final judgment enter as set forth above, in accordance with C.R.C.P. Rule 54(b), as to the claims set forth in the Application and addressed in this Decree.
40. A certified copy of this Decree may be recorded in the offices of the county clerks and recorders for the above-captioned counties.

Dated this ____ day of _____, 2018.

BY THE COURT:

Larry C. Schwartz, Water Judge
Water Division 2